

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

TUESDAY, JUNE 21, 2011

VOLUME 1

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:30 a.m.

Tuesday, June 21, 2011

Syracuse University

College of Law

Grant Auditorium

Syracuse, New York

COMMITTEE MEMBERS PRESENT:

Ms. Rosita Worl, Chair

Mr. Alexander Barker

Ms. LindaLee Kuuleilani Farm

Mr. Eric Hemenway

Mr. Adrian John

Mr. Mervin Wright, Jr.

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1 **WELCOME AND ROLL CALL**

2 ROSITA WORL: Good morning. We will call the
3 NAGPRA Review Committee meeting to order, and the
4 first order of business, let's do a roll call
5 first.

6 DAVID TARLER: Thank you, Madam Chair. I'll
7 call the roll for the seven Review Committee
8 members.

9 Sonya Atalay?

10 Sonya Atalay regrets that she will not be
11 present for this meeting.

12 Alex Barker?

13 ALEXANDER BARKER: Present.

14 DAVID TARLER: LindaLee Farm?

15 LINDALEE FARM: Present.

16 DAVID TARLER: Eric Hemenway.

17 ERIC HEMENWAY: Here.

18 DAVID TARLER: Adrian John?

19 ADRIAN JOHN: Here.

20 DAVID TARLER: Rosita Worl?

21 ROSITA WORL: Here.

22 DAVID TARLER: Mervin Wright, Jr.?

23 Mervin Wright is en route and will be joining
24 us later today.

25 ROSITA WORL: Thank you. Although we do not

1 have a quorum requirement, for the record we do
2 have a quorum. And what I would like to do first
3 of all is to welcome our new members. Alex Barker;
4 Alex Barker is the Director of the Museum of Art
5 and Archeology and Adjunct Professor in
6 Anthropology, Art and Archeology at the University
7 of Missouri. And he comes to us recommended by the
8 American Anthropological Association, the American
9 Association of Museums, and also the Society for
10 American Archeology. So we can see that he is
11 going to make great contributions with his
12 background. Thank you very much for being here.

13 ALEXANDER BARKER: Thank you, Madam Chair.

14 ROSITA WORL: And we also have LindaLee
15 Kuuleilani Farm, and Linda is a partner in the
16 Goodsell, Anderson, Quinn and Stifel. It's a
17 Hawaii-based law firm. And she was nominated by
18 the Natural Science Collections Alliance. We want
19 to welcome LindaLee.

20 LINDALEE FARM: Thank you, Madam Chair.

21 ROSITA WORL: And what we would like to do now
22 is to open up our meeting with a welcome from the
23 Haudenosaunee.

24 **TRADITIONAL WELCOME**

25 SID HILL: You may remain seated. (Native

1 American language), from the Onondaga Nation. I'd
2 like to start the meetings, welcome everybody here,
3 give thanks for all things the Creator has given to
4 us.

5 (Native American prayer.)

6 I'd just like to go through – this is part of
7 our culture when we give thanks. Any meetings that
8 we start we give thanks to the – to all the things
9 that the Creator has given to us, Mother Earth, all
10 the trees and the birds and the animals, the
11 plants, the medicines, the waters, all the things
12 that we plant. We give thanks for the soft winds
13 and also thank all the things in the sky world, the
14 thunders, the sun, the moon, you know, the stars.
15 And we also give thanks to the Four Protectors who
16 watch over us as we walk upon the earth and for
17 selecting one of our last messages from the Creator
18 some 210 years ago. It was our last message and we
19 feel honored to that, from Handsome Lake. We also
20 give thanks to the Creator for still sending His
21 love to us as we walk about on earth. He's given
22 us everything to do that, to walk peacefully, to
23 treat one another in kindness and love.

24 I just very briefly went through our opening.
25 But again, just start with what the meeting is

1 about, and it's about our ancestors. And it's very
2 important to us and how we treat those of the past,
3 respect them. This is a very important meeting for
4 our people, (inaudible) people of the land. Thank
5 you.

6 ROSITA WORL: Thank you very much. Did we have
7 anyone – we want to thank the Haudenosaunee and the
8 Six Nations for allowing us to come into their
9 country, inviting us into their country, and then
10 also welcoming us very graciously and warmly last
11 evening. It was a real pleasure to meet many of
12 the tribal members from this area. They are
13 sponsoring this – the meeting, as well as the law
14 school, and I'm just wondering, do we have anyone
15 from the law school that wanted to make any opening
16 comments?

17 Okay. Just for the record, we just want to
18 acknowledge our thanks and gratitude to the
19 Haudenosaunee and also to the law school.

20 And for the record, let's have – David, let's
21 introduce our staff.

22 **NATIONAL NAGPRA STAFF INTRODUCTIONS**

23 DAVID TARLER: Yes, I'm pleased to introduce
24 the staff to the NAGPRA Review Committee. My name
25 is David Tarler, and I work in the National NAGPRA

1 Program. Sherry Hutt, behind me, is the Manager of
2 the National NAGPRA Program. Next to me is Carla
3 Mattix from the Office of the Solicitor at the
4 Department of the Interior, and next to her is
5 Stephen Simpson from the Office of the Solicitor at
6 the Department of the Interior. And Lesa
7 Koscielski, who is our transcriptionist, is a
8 contractor on staff to the National NAGPRA Program.
9 She is also responsible for coordinating technical
10 aspects of our training, minutes, transcripts, and
11 is an indispensable member of the staff, and she is
12 based in Rapid City, South Dakota.

13 ROSITA WORL: Thank you. Thank you very much.

14 **REVIEW OF AGENDA**

15 ROSITA WORL: You have the agenda before you,
16 and I think the agenda has been widely distributed,
17 both online on the website, and also we do have
18 hard copies back there. We do have hard copies?

19 DAVID TARLER: Yes, Madam Chair, there are
20 copies of the agenda at the back of the room, and I
21 would like to note with respect to the materials
22 for this meeting that the materials have been put
23 up on the National NAGPRA Program's website, and
24 anyone with WiFi capability and with a laptop in
25 the room can access those materials. If they need

1 assistance, we also have those materials on a flash
2 drive and on CD disk to assist. And also the
3 materials can be flashed on the screen behind you.

4 ROSITA WORL: Thank you very much. You have
5 the agenda, but what we'd also like to add is we
6 recently had a hearing, Senate hearing on NAGPRA,
7 and maybe if we could have brief comments on what
8 happened there, maybe Sherry might be able to do
9 that for us a little later in the agenda.

10 SHERRY HUTT: Certainly.

11 ROSITA WORL: I also want to remind the public
12 that there are two opportunities to hear from the
13 public, so I want you to be thinking about things
14 that you could tell us about any barriers or any
15 recommendations that you might have. So with that,
16 let's go ahead and have the comments from our DFO,
17 our Designated Federal Official.

18 **COMMENTS BY DESIGNATED FEDERAL OFFICIAL**

19 DAVID TARLER: Thank you very much, Madam
20 Chair. We, in the National NAGPRA Program and the
21 Department, join you in welcoming our two new
22 Review Committee members, LindaLee (Cissy) Farm and
23 Alex (Alec) Barker. And also I would like to note
24 for the record that the 76th Annual Tribal Assembly
25 of the Central Council of Tlingit and Haida Indian

1 Tribes of Alaska was held in April, and one of the
2 assembly highlights included Sealaska Heritage
3 Institute President Rosita Worl receiving the
4 President's Lifetime Achievement Award and
5 designating April 14th, 2011, as Rosita Worl Day.
6 Congratulations.

7 ROSITA WORL: Thank you.

8 DAVID TARLER: I will reiterate your comments,
9 Madam Chair, about public comment. There will be
10 opportunity for public comment, both today and
11 tomorrow. And that concludes my comments.

12 ROSITA WORL: Thank you, Mr. Tarler. Why don't
13 we go right away into our first agenda, a report on
14 responses to the five recommendations of the GAO
15 report.

16 **REPORT: RESPONSES TO THE FIVE RECOMMENDATIONS OF**
17 **THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO) IN THE**
18 **REPORT NATIVE AMERICAN GRAVES PROTECTION AND**
19 **REPATRIATION ACT: AFTER ALMOST 20 YEARS, KEY**
20 **FEDERAL AGENCIES STILL HAVE NOT FULLY COMPLIED WITH**
21 **THE ACT (NO. GAO-10-768)**
22 **PRESENTATION**

23 SHERRY HUTT: Madam Chair, good morning. Good
24 morning, all members of the Review Committee. The
25 GAO report on NAGPRA – and I should specify because

1 now there are two GAO reports that you'll hear
2 about today – and that report was issued in July of
3 2010. When a report such as that is done, there
4 are recommendations and those recommendations are
5 not merely made, they are of consequence and must
6 be followed up upon. So the responses of the – of
7 the Department of the Interior to those responses –
8 to those recommendations are of consequence, and
9 I'm pleased to report to you on the progress of all
10 five recommendations. As to – I'll first deal with
11 recommendation one and two, and then I will pass
12 off to counsel to discuss three, and then I'll fill
13 you in on recommendation four and five.

14 As to recommendation one, the study of course
15 was – the study assignment was to look at Federal
16 agency compliance with NAGPRA. And in
17 recommendation number one, the GAO requested that
18 Federal agencies review their resources, needs and
19 timeline in which to come into compliance with
20 NAGPRA Sections 5 and 6. So what – 5 and 6 is
21 shorthand for saying doing summaries and
22 inventories. Now, we don't have Federal agencies
23 that have not done summaries and inventories. It's
24 a matter of updating those, making sure they're
25 complete, doing consultation, and revising those

1 inventories as may be necessary.

2 Now the Department of the Interior followed up
3 on the GAO recommendations, and they issue
4 directives to Federal agencies in Interior. A
5 similar process occurred in Agriculture and in
6 Department of Defense. In other words, the
7 agencies were then to respond to that
8 recommendation to their Secretary so that a
9 response could be made, in this case to Congress.
10 Recommendations one and two are not merely
11 responses to the GAO; they're responses to
12 Congress. So I'm pleased to report that the
13 Federal agencies did compile those by the first
14 week of May, and those responses were then compiled
15 for review by the Department and issuance to the –
16 to Congress, to the – and Congress, it will be the
17 Speaker of the House and President of the Senate,
18 right? – and to the Indian Affairs in the House,
19 Indian Affairs Committee in the House and Natural
20 Resources in the Senate. As to – excuse me? I'm
21 sorry; it's Indian Affairs in the Senate and
22 Natural Resources in the House. I apologize, I
23 misstated. And I'm pleased to report that as to
24 recommendation number one, the various departments
25 are anticipating on-time delivery of that response,

1 and the responses are due June 30, so next week.
2 When those responses are officially issued – that
3 is signed off on by their respective Secretaries;
4 Interior, Ag, Defense – then we will make – we will
5 put them up on the website, and we will certainly
6 notify the committee and give you that information.

7 What you're going to see in the response to
8 recommendation number one is a review that each of
9 the Federal agencies made of their status and their
10 resources and needs to work with NAGPRA and do what
11 needs to be done. The various agencies stand in
12 different positions based on the size and
13 complexity of the collection. In other words, some
14 Federal agencies have small collections. Others
15 have vast collections, and they're dealing with
16 issues of collections in non-Federal repositories,
17 and I note that's a – that will be a recurring
18 issue that you'll hear these next two days. It's
19 noted in your Report to Congress for 2010. And so
20 what you will see is a rather candid description of
21 the needs and resources of the Federal agencies to
22 do their summaries and inventories in a way that
23 will bring them up to speed.

24 Recommendation number two was that notices be
25 published. And just to review for us very quickly,

1 the inventories list all of the human remains,
2 Native American human remains in the collection and
3 the associated funerary objects. As to those
4 individuals that are able to be culturally
5 identified – those are what we call culturally
6 affiliated – those individuals should be in Notices
7 of Inventory Completion. And then we ask the
8 question: Of those individuals in Notices of
9 Inventory Completion, how many have actually gone
10 back to tribes? As to the notices, the GAO asked
11 certain Federal agencies when they might publish
12 certain notices, to bring them up to the point that
13 the GAO recommended that they be. Recommendation
14 number two involves a timeline for getting those
15 notices published. What you will see, when the
16 Federal agency responses to recommendation number
17 two are presented to Congress, is a timeline for
18 doing just that, and it varies a bit from agency to
19 agency, depending on how much work is to be done
20 and the point at which they're at. But I hope that
21 you will be pleased with the candor of the
22 responses.

23 And what recommendation one and two of the GAO
24 did, with the Federal agencies, is it gave a sort
25 of impetus to an introspective look at where things

1 are and what's being done. And that's not to say
2 that the folks who do this work every day in the
3 agencies weren't doing that already. But with the
4 GAO recommendation out there, there certainly was a
5 vehicle for conversation between the folks who do
6 NAGPRA every day and their division heads and their
7 agency heads, and that sort of thing, to really
8 heighten the attention that is given to NAGPRA
9 compliance. So I – it's all a positive result, and
10 you can anticipate an on-time compliance with the
11 GAO recommendation by the various bureaus and
12 departments of the government that have that. And
13 as I said, we'll get those to you once they are
14 issued by the respective secretaries.

15 As to recommendation number three, I'm going
16 to turn it over to counsel.

17 STEPHEN SIMPSON: The – in arriving at
18 recommendation number three, GAO looked at the list
19 of tribal entities or Indian tribes for purposes of
20 NAGPRA that is put out by the National NAGPRA
21 Program and compared that to the Bureau of Indian
22 Affairs' list of federally recognized Indian
23 tribes, and found that the two lists did not
24 coincide in the area of the – well, with respect to
25 Alaska Native Corporations that were created under

1 the Alaska Native Claims Settlement Act [ANCSA].
2 The BIA list did not include those corporations as
3 Indian tribes; the National NAGPRA Program list
4 did, for purposes of NAGPRA. And so GAO, in
5 recommendation three, recommended that National
6 NAGPRA, in conjunction with the Office of the
7 Solicitor, reassess whether those corporations
8 should be considered as eligible entities for the
9 purposes of carrying out NAGPRA, considering both
10 the Solicitor's opinion on the BIA list and the BIA
11 list itself.

12 And in response to that recommendation, the
13 Solicitor's Office looked at this issue, went
14 actually further than the GAO had and looked at the
15 statutory authority and the regulations in addition
16 to the BIA list, and concluded in an opinion issued
17 in March, on March 18, that the plain language of
18 NAGPRA, as reinforced by the legislative history of
19 NAGPRA, specifically excluded Alaska Native
20 Corporations from the definition of Indian tribes
21 for purposes of NAGPRA, and that the inclusion of
22 those corporations in the regulations was therefore
23 contrary to the statute, and we recommended that
24 the program work as quickly as possible to remedy
25 that situation.

1 In response to our opinion, which is, by the
2 way, not only in your materials but also in a
3 couple of places on the National NAGPRA website,
4 the program has an interim final rule going through
5 the surname and signature process at the Department
6 right now that would remove the definition of
7 Indian tribe from the regulations, leaving the
8 statutory definition in place. And as we noted in
9 our – in the Solicitor's Office opinion, Alaska
10 Native tribes or Native villages and tribes could
11 still ask for help from corporations. Corporations
12 could serve as a contractor or as a co-claimant for
13 cultural items under NAGPRA, but that the
14 corporation – but that would be the limits of their
15 statutory role.

16 There was – and Sherry mentioned or I think,
17 Madam Chair, you mentioned the Senate hearing last
18 week. There was a question by Senator Murkowski on
19 this opinion, which the Deputy Director of the Park
20 Service responded correctly, that it was based on
21 the statutory language. She did note in response
22 to a question from Senator Murkowski that Interior
23 would not object to changing that language, but
24 that that's the way the statute currently reads.
25 So that's – and we expect the interim final rule to

1 be signed any time now.

2 SHERRY HUTT: The status of recommendation
3 number three is closed. In other words, the
4 Department of the Interior reported to the GAO the
5 steps taken in response to that recommendation.
6 The GAO has accepted those steps, and that item is
7 closed. So one and two are still open until
8 they're reported on June 30, but number three is
9 closed. And National NAGPRA has removed the ANCSA
10 corporations from the list of tribes eligible to
11 receive status under NAGPRA. That does not mean
12 they can't be consulted and be part of consulting
13 events or be partners on grants and repatriation
14 requests, but at this point, not in their own
15 stead. So that's number three.

16 And then as to number four, recommendation
17 number four was that the National NAGPRA Program
18 take steps to improve the selection process for the
19 Review Committee itself and enforce the integrity
20 behind the committee and in the selection process,
21 so institutionalize that integrity. As you know
22 from reading the report, the report was quite
23 lengthy. There is discussion throughout the GAO
24 report about each sitting member of the Review
25 Committee, either in name or just by description,

1 and different issues are raised throughout the
2 report. Say, on page 20 there will be an issue
3 raised as to a Review Committee member, and then on
4 page 86 that issue will be answered and resolved.
5 So from a Program Manager perspective, if you're
6 looking at improving, then you want to know what
7 problems existed, what missteps were taken so that
8 you can effectuate behavior modification. So you
9 read such things as the GAO report looking for the
10 indicia of missteps.

11 I – when the GAO report was issued, it also
12 specifically indicated year 2006 and 2007, but
13 there was nothing else mentioned. So I followed up
14 with the authors of the report and asked to what
15 they were referring in 2006 and 2007. I did so in
16 an email, and I received a responsive email saying
17 that there was no additional information as to 2006
18 and 2007, so I asked why was that in the report.
19 That email was forwarded to the members of the
20 Review Committee. We did this because we, again,
21 want to be very serious about following up on the
22 recommendations and are at a loss to find what
23 behavior modification is indicated by the report.

24 However, that being said, in 2008, we did make
25 changes in the program in how Review Committee

1 selection is handled. Those procedures were
2 disclosed to the GAO, but they did not mention them
3 in the report. So we had three years of practice
4 with those procedures and, you know, it would have
5 been nice to have had the GAO comment upon them.
6 They did not. However, we included those in our
7 response to the Department in response to number
8 four. The Department gave that to the GAO. The
9 GAO accepted that response, and number four is
10 closed.

11 So let me tell you what number four – the
12 response to number four was, and that is that the
13 Review Committee is a function – is a creature of
14 statute. We follow that statute. The nominations
15 to the Review Committee are posted – the
16 solicitations for nominations are posted in the
17 Federal Register, so we had all the Federal
18 Register notices as part of the package that was
19 given to the GAO. In response to those
20 solicitations [sic], we then receive nominations
21 from tribes, if it's a tribe member, and from
22 museum and science organizations, if it's a museum
23 and science organization member, and of course,
24 from the Review committee, if it's the Review
25 Committee nomination. We then turn all nominations

1 over to the Secretary.

2 One of the changes we made in 2008, and this
3 was to give some distance with the program and to
4 avoid even any appearance of impropriety, because
5 of course integrity is based on appearance of
6 impropriety. And the National Park Service, in
7 which we are housed, has a Policy Office. They
8 perform a function for any number of organizations
9 in the Park Service that have public committees
10 such as this. We think this committee is special
11 and has additional duties, but there are similar
12 types of committees. And they perform that
13 function in taking the nominations and moving them
14 through the process and the Department of the
15 Interior to the Secretary.

16 And so beginning in 2008, we took the
17 nominations and the backup material, the resumes
18 and the recommendation letters that were sent in,
19 and gave those to the Policy Office. They then
20 hand-carried that through the Department up to the
21 Secretary, and the Secretary makes a determination.
22 Now, who the Secretary chooses and how the
23 Secretary goes about choosing that individual or
24 individuals, if there's more than one opening, is a
25 matter of pure discretion of the Secretary. We do

1 not invade that. We do know that all members are
2 also vetted by the White House. That is a – that
3 is a determination made by each Administration, but
4 both Democrat and Republican Administrations that
5 we have worked with have had the names vetted by
6 the White House. It adds, I think, a higher level
7 of review and input into the Review Committee and
8 is indicative of the high stature of the committee.

9 And that is the process that we followed.
10 There is no secret process or underlying process,
11 and the GAO accepted that. Now I don't know why it
12 wasn't in the report in the first instance, but in
13 any event, that is the response. It has been
14 accepted, and that is closed. All of you here have
15 been chosen since 2008 and are products of that
16 process.

17 As – and I might mention one more thing. When
18 the member is filling a spot for a Review Committee
19 member nominated by a tribe who is also a religious
20 leader, we must ask the question from the
21 nominator: Is this individual a religious leader?
22 It's a very difficult question to ask, and we do
23 have people sometimes take offense that we are
24 asking that question. We do not look behind the
25 answer. We do not ask for substantiation of what

1 an individual tribe's determination of religious
2 leader is. But the statute says of the three
3 nominated from tribes, two must be religious
4 leaders, so we must ask that question and, in
5 filling those slots, have that additional piece on
6 the information that goes forward to the Secretary.
7 So if I might publically give that as a forward-
8 going apology in that regard, it is simply
9 something that we must ask if we are carrying out
10 our statutory duties. But it is not a qualifier.
11 We do not weigh what the response is in that
12 regard. So that is number four.

13 As to number five, number five responds to
14 something that this committee has discussed many
15 times, and that is when individuals are in a
16 notice, when Native American ancestors are in a
17 published notice, how many of those have been
18 spoken for and have gone back to tribes? The
19 statute and the regulations do not include process
20 or authority for the National NAGPRA Program to go
21 that far and require that kind of reporting from
22 museums and Federal agencies. The regulations
23 promulgated in '95 have a provision that Federal
24 agencies maintain that data, but it was never
25 indicated in regulation that they also turn that

1 data over to the National NAGPRA Program so that we
2 might report it to the Review Committee and the
3 Review Committee then report it to Congress. We've
4 always wondered, at some point Congress was going
5 to say and how are we doing, how many of the
6 ancestors have gone home, and we would not be able
7 to furnish that information.

8 GAO recommendation five speaks squarely to
9 that issue. And there are two parts to five, five-
10 A is that the Department of the Interior request of
11 the various bureaus to turn those statistics over
12 to the National NAGPRA Program. That was completed
13 in December of 2010, the request has been made, and
14 we have had several meetings, the National NAGPRA
15 Program, with the various bureaus, both in and
16 outside of Interior who have NAGPRA
17 responsibilities, to discuss the format template,
18 if you will, for making that kind of data request,
19 the timing of the transmission of the information
20 and have worked openly with the Federal bureaus to
21 make that happen.

22 So as a consequence of recommendation five,
23 that five-B part is that the National NAGPRA
24 Program actually receive the information, give it
25 to the Review Committee, so that the Review

1 Committee can provide it to Congress. We did that.
2 We began in November. Actually even before the
3 Department's request went out, we took the
4 statistics that we had and that agencies had given
5 us voluntarily, and we gave those to you in
6 November, and they are also in your 2010 report,
7 which will go to Congress in a very fast or prompt
8 response to recommendation five.

9 When you have finalized your 2010 Report to
10 Congress, have voted on it, if those statistics are
11 in there and we produce those for Congress, that
12 will close recommendation number five. And the key
13 to that is that it is an annual and ongoing
14 process, and the Federal agencies have accepted
15 that. So we can expect every year going forward
16 when we give – when the National NAGPRA Program
17 gives you its end of the year report, it will have
18 those statistics in there for you to rely upon each
19 year in making your Report to Congress. So that's
20 a new piece that we have the GAO report and
21 recommendation to thank for providing us. And that
22 concludes my report on the GAO.

23 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

24 ROSITA WORL: Thank you very much, Sherry, for
25 your report. Before I open it up for questions or

1 comments, if I could just note that first of all
2 the Review Committee had requested a GAO review,
3 and so we got what we asked for. And secondly, I'd
4 just like to note that the Review Committee does
5 have its own comments on the GAO report. Some of
6 you may have heard those comments at our last
7 meeting, but we have also included it in our 2010
8 annual report.

9 The other thing is just for the information
10 for my colleagues, my new colleagues here, and for
11 those of you who might not be aware of what Alaska
12 Native Corporations are; Alaska Native Corporations
13 are corporations that were created by Congress in
14 our aboriginal land settlement of aboriginal lands
15 in Alaska. And they are – they are for-profit-
16 making corporations, but they are also very unique
17 in that they have many attributes of being a tribe.
18 Congress has recognized ANCs, Alaska Native
19 Corporations, as tribes for special statutory
20 purposes in over a hundred pieces of legislative
21 acts. So I think we got caught up in, you know,
22 going back and looking at what Congress really
23 intended, and I think the issue there was Indian
24 Country, and we have had a lot of opposition to
25 Indian Country in Alaska. So I think that's what

1 happened when you saw the Congressional – the
2 historical review. So that's what Native
3 Corporations are. We do have corporations and we
4 do have tribes in Alaska.

5 STEPHEN SIMPSON: That's fairly – that's what
6 Congress had in mind was fairly clear from the
7 legislative history, yes.

8 ROSITA WORL: Thank you. So do we have any
9 comments or questions of Sherry on her report?

10 Very good report. Thank you.

11 We do have a question. Alec?

12 ALEXANDER BARKER: Just for the sake of
13 clarification, items one and two –

14 ROSITA WORL: Alec, could you put your mic a
15 little closer, please? Thank you.

16 ALEXANDER BARKER: Sure. Items one and two
17 remain open?

18 SHERRY HUTT: Correct. They are – the due date
19 on that is June 30, and we anticipate that the
20 departments – Ag, Interior and DOD – will have
21 their responses in by June 30, and then once we
22 receive all of those we will make them available to
23 you and post them on the website.

24 ALEXANDER BARKER: And item three is based on
25 the Solicitor's determination that ANCSA does not

1 qualify under NAGPRA. That has been transmitted,
2 and GAO considers that point closed.

3 SHERRY HUTT: Right, numbers three, four and
4 five-A are considered closed. Five-B is awaiting
5 your 2010 Report to Congress, and numbers one and
6 two are awaiting the June 30 submission from the
7 departments.

8 ALEXANDER BARKER: And in item four it's - GAO
9 acknowledges that there have been no irregularities
10 in the appointment process, and that's closed?

11 SHERRY HUTT: They have accepted our process,
12 and that is closed.

13 ALEXANDER BARKER: Okay. And for five, five-B
14 is something which will be provided hopefully by
15 the time of the next annual report, is that
16 correct? By the 2010 report?

17 SHERRY HUTT: Yes, we anticipate taking your
18 Report to Congress, which we anticipate you will
19 finalize when we leave this meeting, and on
20 transmission of that to Congress that will close
21 five.

22 ALEXANDER BARKER: Thank you.

23 SHERRY HUTT: Do you want to talk about the
24 hearing at this time or -

25 ROSITA WORL: What was that?

1 SHERRY HUTT: The hearing, did you — do you
2 want to talk about the hearing?

3 ROSITA WORL: Oh, go ahead. Let's go ahead and
4 do that.

5 SHERRY HUTT: You mentioned the GAO report, and
6 Madam Chair, if this would be an appropriate time
7 to discuss the hearing?

8 ROSITA WORL: Yes.

9 **DISCUSSION: OVERSIGHT HEARING ON FINDING OUR WAY**
10 **HOME: ACHIEVING THE POLICY GOALS OF NAGPRA (JUNE**
11 **16, 2011)**
12 **PRESENTATION**

13 SHERRY HUTT: On June 16, the Senate Indian
14 Affairs Committee held an Oversight Hearing on
15 NAGPRA and actually repatriation law generally,
16 because it included the Smithsonian. The
17 Smithsonian is not under NAGPRA. It has a
18 separate, but somewhat parallel, but not completely
19 identical, statute. And there were two GAO
20 reports, one on NAGPRA and one on the Smithsonian.
21 You will hear later, in your meeting agenda, from a
22 representative who will discuss the Smithsonian
23 report. But the Senate has not had an Oversight
24 Hearing for some time, and they wanted to basically
25 know, how's it going? And Senator Akaka chaired

1 the meeting. He is Chair of the Senate Indian
2 Affairs Committee. He was joined at various times
3 by Senators Udall and Murkowski.

4 I would commend to all of you the meeting
5 materials that were submitted by those who
6 testified. You can – if you go to the NAGPRA
7 website, top and center of the home page, there's a
8 link that takes you right into the Senate. And
9 when you go into that Senate webpage on the
10 hearing, you'll see all of the materials, all of
11 the written testimony that was given. The written
12 testimony was far more extensive than the five-
13 minute-per-person oral testimony that you have in a
14 hearing. In addition, Senator Akaka left the
15 record open for two weeks, so you may have
16 additional materials submitted. And if they are,
17 those too will go up on Senate website and be
18 accessible to you when you click into that link.

19 I commend them to you because in those
20 materials, particularly from the tribal witnesses,
21 you will see a fairly robust discussion of
22 circumstances in Indian country with regard to
23 NAGPRA, and some may be matters that can be
24 addressed by Congress or National NAGPRA, but some
25 are just the nature of working with museums and

1 Federal agencies, things that we can all be
2 informed of as we help to make the process work
3 better. So just sitting there as National NAGPRA,
4 I found it a very informative hearing to hear these
5 pieces and I commend them to you because it's the
6 sort of thing that you would comment on in your
7 annual reports in terms of what's going on in the
8 country.

9 Now the hearing was focused on Federal agency
10 and Smithsonian, so there were not people
11 testifying from museums. If people from museums
12 submit materials, they will be put up as well, so -
13 but you have some material to work with, and I
14 commend it to you because it was rather thorough
15 and from the field, face-to-face issues that are
16 directed at NAGPRA. And I don't want to
17 characterize them, but I found it very informative
18 and I hope that you will too.

19 The GAO testified. They were on the first
20 panel. And they testified to some facts and
21 circumstances that were, let's say, updated from
22 their report. In their report, they indicated that
23 Federal agency compliance was running at about the
24 50 percent level. In their testimony to Congress,
25 they indicated that it was 75 to 85 percent. And

1 they basically used the same statistics that we
2 give you in the end of the year report, that are on
3 our website, and they used those to update their
4 statistics and give that report. And it was based
5 on looking at actual Federal agency action in terms
6 of moving the individuals into inventories, into
7 notices, and then into repatriation experiences.

8 And they were asked by Senator Murkowski, the
9 GAO was asked: What is the indicia of good Federal
10 agency action in NAGPRA? What are the best – she
11 was looking for best practices or best performers,
12 and they identified three agencies: the DOD,
13 Department of Defense; the National Park Service;
14 and the Forest Service. And they all had
15 completion rates of 75 to 85 percent at this point.
16 Keep in mind there's a lot of work in NAGPRA, so
17 those are fairly good statistics. And Senator
18 Murkowski asked what is it that tends to have you
19 identify those three agencies, what might other
20 agencies aspire to, and their comments were that
21 they had a centralized office to keep track and
22 make sure that things were moving forward, that
23 they knew where their collections were, and that
24 they had good processes and policies in place for
25 making decisions and – making decisions on

1 consultation and working with tribes and moving
2 those – the information that they received in
3 consultation into determinations on cultural
4 affiliation and publishing their notices. So those
5 were some rather concrete examples of good
6 practice.

7 The second panel was the Park Service and
8 Peggy O'Dell, who is the Deputy Director of the
9 Park Service, and Kevin Gover, who is the Director
10 of the National Museum of the American Indian. And
11 I will leave the National Museum of the American
12 Indian comments to the person who will be speaking
13 shortly, because that law is somewhat different
14 than NAGPRA and, therefore, is open to different
15 processes, policies, and actions. But on the
16 NAGPRA side, the Park Service testimony was to
17 indicate the progress that had been made and those
18 numbers are taken from your midyear report that you
19 received. So we'd initially thought at the program
20 we weren't going to do a midyear report with all of
21 the other work that needed to be done, but we did
22 it and I'm pleased that we did it because it was
23 helpful in helping the witnesses prepare for that
24 hearing.

25 One of the comments that was made during the

1 hearing was as to grants. Now there are two types
2 of grants that we have: repatriation grants, which
3 are noncompetitive, they are for small amounts, up
4 to \$15,000, and they are to bring the repatriated
5 individuals or items home to the tribe, so it
6 basically covers travel and ceremony. Those
7 repatriation grants come from the same pot of funds
8 as the project grants, which are competitive and
9 fund identification and repatriation and are given
10 to tribes and museums to get the work done. So the
11 way we work it in the National NAGPRA Program is
12 beginning on the first day of the fiscal year,
13 requests can be made for repatriation grants. They
14 are noncompetitive, so they're all funded, assuming
15 they have all the pieces in place, and then they
16 are accepted until June 30. On June 30, or
17 thereabouts in June, the project grants have then
18 been identified by the panel, prioritized by the
19 panel and they go to the Assistant Secretary for
20 award of the project grants. So we know in June
21 how much money we've spent on – or we've committed
22 on repatriation grants, and we've never denied a
23 repatriation grant. And the witness testified we
24 have never denied a repatriation grant, and Senator
25 Murkowski picked up on that and said, my, that's

1 wonderful, you have full funding of your
2 repatriation grants.

3 What we will need to make clear as we go
4 forward and in any questions – follow-up questions
5 that we receive from the Senate, is that that's
6 true; we have not failed to fund a repatriation
7 request, but it comes from the pot of funds that is
8 available for project grants. This year, we will
9 not be funding all of the grants that the – that
10 the grants panel deemed as fundable, as recommended
11 for funding, because we ran out of funds. So there
12 is a grants issue, and we'll be talking about that
13 more when we do the program report.

14 But in the hearing the GAO had commented in
15 their report that repatriation grants were – sort
16 of stayed at about \$50,000 a year. In fact, over
17 the last three years there's been a 300 percent
18 increase in repatriation grant requests. We
19 consider – the Park Service considered in testimony
20 that 300 percent increase is significant and should
21 be commented upon because it was missed in the GAO
22 report. And I have to tell you, since I'm on this
23 topic, that I would credit the work of Sangita
24 Chari, who is our grants coordinator, and her
25 outreach effort to make it known to tribes that

1 this money is there and that you can use this
2 money.

3 The reason it was critical in the context of
4 the hearing is that when you speak of the
5 individuals who have been listed in notices and are
6 available to go home upon requests from tribes and
7 you find that if there are 20,000 or more of these
8 individuals in notices who have been culturally
9 affiliated or in notices and available and only
10 10,000 of those have actually been repatriated and
11 gone home, what is the reason that the other – that
12 the remainder have not gone home. Now there may be
13 a number of reasons and this committee may discuss
14 those further on in this meeting, but certainly not
15 for the lack of funding, and that was the point
16 that the Park Service was making; that the funds
17 are there and that that – the repatriation grants
18 are actively administered and that 300 percent is a
19 significant number of increases and that funding is
20 not the reason that they're not going home. Now
21 that does not mean we don't need more grant money
22 and that piece was left out of the hearing.

23 Following the panel of Kevin Gover and Peggy
24 O'Dell were tribal members, among them Mervin
25 Wright of this Review Committee. And they gave,

1 again, detailed comments on the experiences of
2 those in Indian country in dealing with museums,
3 universities, Federal agencies in the repatriation
4 experience. And they were detailed and specific
5 and well stated, and I commend them to you, rather
6 than having me try and do injustice to them
7 encapsulating them in a brief statement, I really
8 do commend that you read them in full. So that was
9 the – that was the hearing, if there are any
10 further questions.

11 We will get – we do anticipate that the Senate
12 will give us follow-up questions and we will have
13 follow-up responses. And as we typically do, we
14 give those to you once the Department has signed
15 off on them and we put those up on the website as
16 well.

17 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

18 ROSITA WORL: Great. Do we have any questions,
19 comments from the Review Committee?

20 Just following up on Sherry's comment that I
21 think, you know, it will be really helpful for us
22 to review the written testimonies, which I think
23 were probably a lot more than the five minutes that
24 they had to offer.

25 SHERRY HUTT: Oh, they were.

1 ROSITA WORL: So we look forward – I guess
2 they're on the website.

3 SHERRY HUTT: They are. They are, and they are
4 quite extensive and rather enlightening. And also
5 there's a webcast of the hearing, and you can link
6 that in too. And you go – you can either go right
7 to the Senate website, or if you go to the NAGPRA
8 website, we keep the link on there. And we've kept
9 the link up there even though the hearing is past,
10 because the materials continue to be updated by the
11 Senate and you can – and you read all of them. So
12 you have both the webcam experience, if you did not
13 hear it initially, and the – which are just the
14 five minutes pieces, but you hear the questions
15 from the members of the Senate and they were
16 excellent questions that were geared toward each of
17 the witnesses, rather tightly focused, and then the
18 written statements are quite extensive.

19 ROSITA WORL: We did have one of our Review
20 Committee members testify before the hearing as –
21 in his capacity as Vice Chair of the Paiute Tribe,
22 so we may, if there are no objections, ask him if
23 he wants to make any comments about his testimony
24 since I think there are some items of interest to
25 us and, you know, how we might want to approach

1 some of his recommendations.

2 SHERRY HUTT: And Madam Chairman, if I might
3 add, the Review Committee is a statutory body to
4 Report to Congress. So as soon as I was alerted by
5 a Senate staffer that there would be a hearing, I
6 then alerted the Chair, because the concern was
7 that the Review Committee should be invited to
8 appear. Among all witnesses, in any hearing in
9 Congress on NAGPRA, I would hope that the Review
10 Committee would be invited to appear.

11 ROSITA WORL: And I agree with you, and I did
12 actually meet right almost immediately with the
13 council to the committee and discussed that, and
14 I'm hopeful that in the future that the Review
15 Committee will have – you know, will be invited to
16 participate, so – go ahead, Alex.

17 ALEXANDER BARKER: Again, I apologize for
18 always asking for clarification, Ms. Hutt. My
19 understanding from what you have said – my
20 understanding from what you have said is that
21 museums, scientific organizations, similar entities
22 were not invited to testify as part of that
23 hearing?

24 SHERRY HUTT: Correct, the focus of the hearing
25 was Federal agency compliance.

1 ROSITA WORL: Any further questions?

2 Thank you very much, Sherry.

3 SHERRY HUTT: Thank you.

4 ROSITA WORL: Let's go ahead and go on to our
5 next discussion item. It's the GAO report, *Native*
6 *American Graves Protection and Repatriation Act:*
7 *After 20 Years, Key Federal Agencies Still Have Not*
8 *Fully Complied with the Act.*

9 **REVIEW COMMITTEE DISCUSSION: RESPONSES TO THE FIVE**
10 **RECOMMENDATIONS OF THE GOVERNMENT ACCOUNTABILITY**
11 **OFFICE (GAO) IN THE REPORT NATIVE AMERICAN GRAVES**
12 **PROTECTION AND REPATRIATION ACT: AFTER ALMOST 20**
13 **YEARS, KEY FEDERAL AGENCIES STILL HAVE NOT FULLY**
14 **COMPLIED WITH THE ACT (NO. GAO-10-768)**

15 ROSITA WORL: And so we're looking for Review
16 Committee comments. I might note that we have
17 already made comments on the GAO report to this
18 item in our 2010 annual report. However, we may
19 have additional comments, and one of the things
20 that I noted from Sherry's review was that when the
21 question was asked, I think by Senator Murkowski,
22 you know, where did they find that – you know, what
23 was a good model for Federal compliance, and they
24 pointed to Forest Service, NPS, and DOD. And their
25 answer was that those agencies had centralized

1 NAGPRA offices, and those agencies that have that
2 failed response of 75 to 80 percent don't have
3 NAGPRA offices. And that's something that this
4 committee might want to consider as a
5 recommendation to – either in our annual report or
6 in a letter to Congress and to the Secretary that
7 we offer this as a recommendation. So any –

8 So I'm just asking how we should proceed with
9 that. Since this is a 2010 annual report, I guess
10 it would be too late to put it into this one, and
11 so it's something we might consider for the 2011
12 annual report, but because of the gravity of this
13 issue, it might be appropriate for us to write to
14 the Secretary of Interior and urge that he, you
15 know, urge this with the other Federal agencies.

16 SHERRY HUTT: Madam Chair, if I might?

17 ROSITA WORL: I'm just looking for a process.

18 SHERRY HUTT: Yes, to give you some – first of
19 all, I should elaborate, when the GAO identified
20 the three exemplary Feds, the Corps of Engineers
21 within DOD, the Corps was specifically identified,
22 so I should give due credit to the Corps of
23 Engineers.

24 A process – if you're looking for a process
25 here, what we may do, I just suggest this, since

1 we, as the National NAGPRA Program do an annual
2 report fiscally by September 30, so that you can
3 then have it as you prepare through October and
4 November your report, we might expand in our report
5 to you sort of a Federal agency section and meet
6 with the Federal agencies after – sometime between
7 after this meeting and the end of the fiscal year,
8 to see what they would want in such a report to
9 illuminate their activities and coalesce that so
10 that you would have more material on Federal
11 agencies' progress and actions or structure,
12 whatever they choose to put in so that you would
13 have that information to draw upon in compiling
14 your report. We give you statistics in terms of
15 how many notices or this and that, but we don't
16 always break it down by Fed, by Fed agencies. And
17 if you wanted us to take a stab at breaking it down
18 so that you would have more discreet information on
19 that, we would certainly follow that request,
20 follow up on that. That would give you some sort
21 of data. So in your discussions, if you think of
22 the kinds of things you would want to know then
23 we'll make note of that in our report to you.
24 Would that help?

25 ROSITA WORL: I'm – I guess I'm not looking for

1 data, because we already have enough data that
2 they're not complying, and I'm just saying is there
3 a way that we could express to them, you know, that
4 this may be a mechanism whereby you could improve
5 your rate of compliance by appointing a NAGPRA
6 centralized office, within their agencies, just
7 offering it as a recommendation that they might
8 consider.

9 SHERRY HUTT: Just from our knowledge of
10 working with the Federal agencies, because the
11 National NAGPRA Program does work with the Federal
12 agencies and meet with them one or more times every
13 year, there are centralized offices in other
14 agencies than those three. So whereas that may
15 have been a component, that's not to say that the
16 other Federal agencies did not have. For instance,
17 BLM and BIA and Fish and Wildlife, they all have
18 centralized national offices, and other aspects of
19 the Department of Defense also have national
20 offices. So we – when we have a Federal agency
21 coordinators' meeting, we have members who are –
22 people who attend who are the Federal agency
23 national coordinator for each of those agencies.
24 So that may have been a piece of what contributed
25 to good compliance with the law, but it wasn't the

1 only piece. So I wouldn't mean to say that those
2 were the only three that had national offices.

3 ROSITA WORL: Okay. I guess what I'm looking
4 at is if the GAO report initially reported that we
5 had about a 50 percent rate of compliance and then
6 we hear in their Report to Congress – or their
7 testimony to Congress that in actuality it's more
8 like 75 to 80 percent of noncompliance, I think
9 it's still within the committee's purview to
10 express our concern and to urge these Federal
11 agencies, you know, to develop whatever mechanisms
12 they need, you know, to try to improve their rate
13 of compliance.

14 SHERRY HUTT: Madam Chair, if I might, it was
15 75 to 85 percent compliance, not noncompliance, so
16 their numbers were adjusted upwards in terms of
17 compliance.

18 ROSITA WORL: Oh, I see.

19 SHERRY HUTT: In the GAO report itself, if you
20 look at the way in which they handle their
21 statistical analysis, they averaged over the years
22 an average across the agencies. When they broke it
23 down by agency, they actually had different rates
24 of compliance for the various agencies. When we
25 all met in November, we gave you a template of the

1 kinds of data broken down by agency that we want to
2 fill in the numbers and give you in the 2011 fiscal
3 year report. And that will give you a breakdown of
4 data, that's what we intend, by agency. If there's
5 additional information from the agency, then if
6 there's something you want, we would seek that as
7 well. I should tell you all that in the program
8 when we speak to the agencies, just as when we
9 speak to tribes and museums, we heartily recommend
10 to them that they appear before the Review
11 Committee, that they give you updates as to
12 successes and barriers as the statute indicates, so
13 that you would have that kind of information for
14 your – for your Report to Congress, that that
15 vehicle is there. And you will have, at this
16 meeting, a number of reports given to you.

17 ROSITA WORL: Okay, then I guess what we can be
18 doing then is just monitoring, you know, that
19 progress.

20 Okay. Do we have any questions, comments?
21 Any further questions, comments?

22 Okay. I think we're ready for the
23 Smithsonian, their presentation on the GAO report,
24 *The Smithsonian Institution: Much Work Needed to*
25 *Identify and Repatriate Indian Human Remains and*

1 *Objects.* And we have a representative from the
2 Smithsonian. Welcome.

3 **PRESENTATION: THE GAO REPORT SMITHSONIAN**

4 **INSTITUTION: MUCH WORK NEEDED TO IDENTIFY AND**

5 **REPATRIATE INDIAN HUMAN REMAINS AND OBJECTS (GAO-**
6 **11-515)**

7 **JACQUETTA SWIFT**

8 JACQUETTA SWIFT: Good morning. Can you hear
9 me okay? My name is Jackie Swift. I am the
10 Repatriation Manager for the Smithsonian's National
11 Museum of the American Indian, and I'd like to
12 begin by expressing my thanks to the repatriation
13 Review Committee for the opportunity to speak
14 today, and to staff of the National NAGPRA Program
15 for making arrangements for this presentation, and
16 to Syracuse University College of Law for hosting
17 this meeting, and of course, to the Haudenosaunee
18 for accepting us into a beautiful part of their
19 world.

20 As members of the committee are already aware,
21 the Smithsonian Institution is not subject to
22 NAGPRA. The repatriation efforts at the
23 Smithsonian are guided by the National Museum of
24 the American Indian Act. The NMAI Act did more
25 than create our museum, NMAI; it was also the first

1 piece of Federal legislation on repatriation. But
2 the first – but this first law only impacted the
3 Smithsonian Institution, which is comprised of 19
4 museums, 3 research centers and 1 national zoo.
5 However, there are only two Smithsonian museums
6 which have collections that fall under this act,
7 the NMAI and Natural History – or National Museum
8 of Natural History.

9 Each museum is guided by the NMAI Act, the
10 law, and by its own distinct policy and not by
11 Federal regulations. And I'd like to point that
12 out here because we get that confusion all the
13 time, consistently. There's confusion out in
14 Indian country about us as NAGPRA. We even have
15 some staff internally that call what we do NAGPRA,
16 and I think it's a branding kind of a thing. And
17 so we're always trying to create – explain that
18 sort of educationally about what we are, who we
19 are. There are these two separate laws.

20 The other point I think Sherry was talking
21 about the oversight hearing last week, Senator
22 Akaka made a comment about the legislation, about
23 enacting, doing these things at an administrative
24 level and a policy level before going to
25 legislation, as sort of a last recourse. And

1 thankfully for us and what we do, we can work at
2 that policy level, and that's really what makes us
3 unique and different in that respect at NMAI.

4 So I'm here today to only speak on behalf of
5 NMAI. Specifically, I wanted to provide a general
6 overview of the recent GAO report on the
7 Smithsonian's repatriation efforts and to discuss
8 one of the recommendations in particular on behalf
9 of NMAI. We obviously both have a vested interest
10 in the goals and success of repatriation,
11 regardless of whether we're an agency, a museum or
12 an institution, and so we thought that it was very
13 appropriate in timing.

14 As I mentioned, the GAO recently completed a
15 17-month review of the repatriation efforts of the
16 Smithsonian. Its final report was released May 25,
17 which was just less than a month ago, and is
18 available, of course, on the GAO website. Although
19 the report acknowledged that the tribes were
20 generally satisfied with our repatriation program,
21 it did make one repatriation – or one
22 recommendation to Congress and four recommendations
23 to the Smithsonian. The recommendation to Congress
24 was that Congress may wish to consider ways to
25 expedite the Smithsonian's repatriation process.

1 the recommendation — well, you know what I probably
2 should do, I'll just make a quick note, as a matter
3 of fact, on kind of each of these as a point of
4 reference. Their comment to look — as Congress may
5 wish to look for ways to increase the process, in
6 our Act, it specifically states that, you know, we
7 use the best historical and scientific information
8 available, and of course, we also have Smithsonian
9 standards. That creates a little bit more of a
10 process, but it also creates a lot more accuracy.
11 So that's the recommendation to Congress.

12 The recommendations that they have for the
13 Smithsonian, there are four. One is to expand the
14 Review Committee's jurisdiction to include the
15 American Indian Museum. Currently the oversight
16 for their Repatriation Review Committee is over
17 Natural History. We have our board that basically
18 has sole authority that's been vested in the Act,
19 and that's the group, the body that we work
20 exclusively with.

21 To Report to Congress on the Smithsonian
22 repatriation activities. That's actually not in
23 the law, but it's — we're looking at how we could
24 facilitate that. I don't think that that's going
25 to be an issue, but that's not part of our

1 legislation.

2 Establish an independent appeals process. And
3 so we're looking at those sorts of things
4 internally on how we do that, both at Natural
5 History and at NMAI, so we're looking at an
6 independent appeals process.

7 And the last one, which is really my point for
8 being here, in addition to providing the GAO
9 review, is to develop a policy for human remains
10 and objects that cannot be culturally affiliated.
11 I've worded that slightly different than what they
12 called it, because they're using that terminology
13 "culturally unidentified, CUI." I'll come back to
14 that in a minute, but that's really sort of the
15 impetus for being here.

16 The Smithsonian has generally agreed with
17 these recommendations, and discussions have begun
18 on how to implement these recommendations
19 expeditiously. Given that the report is less than
20 a month old, the discussion for the recommendations
21 to the Smithsonian are pretty much in the
22 preliminary stages. However, this last
23 recommendation to develop a policy for human
24 remains and associated funerary objects that cannot
25 be culturally affiliated is being addressed right

1 now by the repatriation department at NMAI. In
2 part by way of this public forum, we're trying to
3 reach out to make people aware of this effort and,
4 if possible and appropriate, in this venue we'd
5 like to invite questions or comments from the
6 committee or anybody after the meeting, whenever,
7 to talk to us about this policy for NMAI.

8 It may surprise some people to learn that the
9 NMAI Act does not address disposition of
10 unaffiliated remains and the words "culturally
11 unidentifiable" never appear in our act. The act
12 does, however, allow the NMAI to go above and
13 beyond the law, which we do in several ways. For
14 example, we use reasonable basis, the reasonable
15 basis standard instead of preponderance of
16 evidence, which is in our law. We conduct
17 international repatriations based on the principle
18 that every remain in our collection should have the
19 same basic human rights, and we affect repatriation
20 of remains for individuals who cannot be culturally
21 affiliated under the act as CUI.

22 At the NMAI, the highest priority is the
23 return of all human remains and associated funerary
24 objects to their communities of origin. Although
25 the NMAI has never formally written a policy on

1 culturally unaffiliated remains and associated
2 funerary items, in practice NMAI has been
3 addressing these types of returns for over 15
4 years. It's been a standard operating procedure,
5 as a matter of fact. It's important to note,
6 because the GAO failed to report this in the
7 information that we – and we provided them plenty
8 of information, but that failed to make it into the
9 report. I'm not sure why, but we've actually been
10 doing this since the mid-nineties, 17 years
11 actually.

12 Because the NMAI Act does not reference
13 unaffiliated or unidentifiable remains, we have the
14 opportunity to define – to define those terms for
15 ourselves. As we see it, we have – we have cases
16 where there are remains that are technically
17 unaffiliated, but there is enough geographic
18 information that allows us to consult on the
19 respectful disposition of these remains. We also
20 have cases where there is no information to
21 accompany the remains, and so they are truly
22 culturally unidentifiable, but we really prefer to
23 think of them as unknown. The likelihood that we
24 will ever be able to culturally affiliate or
25 identify these individuals is very slim. There are

1 currently approximately 20 catalogue card numbers
2 where this is the case. And that's actually
3 another point that the GAO failed to report on in
4 their final report.

5 That being said, we're very interested in
6 consulting with tribal representatives for feedback
7 on what this policy should look like. Last week we
8 held a session at NCAI where we had the opportunity
9 to get comments from several tribes. We have - we
10 actually have a handout, I provided you guys a
11 handout. We also have it up at the registration
12 table for you folks, and we're looking for feedback
13 on how we can move forward to develop this policy.
14 Our goal is to have a preliminary draft in place by
15 this September.

16 So I wanted to thank you for your time, and I
17 appreciate you allowing us this public forum. It's
18 kind of outside the norm, and I'm not sure if
19 you've had a Smithsonian representative before, so
20 I really appreciate the opportunity. And if you
21 have any questions, I'll attempt to do my best.

22 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

23 ROSITA WORL: Great. Thank you very much. We
24 have had the privilege of having some of your
25 Review Committee or its - Natural History's Review

1 Committee members here, and usually they're at
2 every meeting. So do we have any questions?

3 I looked at the GAO report, and I found,
4 especially the report on the estimated number of
5 human remains and objects that were offered for
6 repatriation as of December 31st, 2010, and I note
7 the glaring difference, I have to say, almost
8 glaring difference between repatriated objects from
9 NMAI in contrast to Natural History. And you said
10 that – and I guess I should disclose also that I'm
11 familiar with NMAI. I served on its board for a
12 number of years and I'm proud to have actually
13 helped develop the repatriation process, and maybe
14 that's why it was so good. No, but you said that
15 NMAI does do, you know, studies. They do your
16 studies before you initiate the repatriation
17 claims. And I guess that – and we don't have
18 anyone from Natural History here, so it's – but
19 have you had an opportunity to look at the
20 different case studies, compare yours to Natural
21 History? I'm just wondering what accounts for that
22 difference.

23 JACQUETTA SWIFT: Well, I can't speak for
24 Natural History, but in terms of the comparison for
25 – are you talking about in style? I mean –

1 ROSITA WORL: No. Well, it just seems to me,
2 if you have 1,190 objects that you were able to
3 repatriate and Natural History has 50, and you both
4 use a case study approach, that there must be some
5 kind of a variance in that that facilitates the
6 return for NMAI.

7 JACQUETTA SWIFT: There's all kinds of
8 variance. I mean, you could take the number of
9 objects in a particular case. You could take, you
10 know, the circumstances of what the category is. I
11 mean, by definition we don't have as many human
12 remains in our collection. I think that when the
13 Smithsonian – it officially became part of the
14 Smithsonian, I think that it was like 630 catalogue
15 card numbers. Today, we have about 260. So it's
16 clearly – there's not the same quantity that we're
17 talking about, so that could be a difference. I
18 know that – I believe that they've had more
19 repatriation for human remains, obviously, than we
20 did because they have more human remains. But we
21 may have other categories that have higher
22 quantities, sacred or cultural patrimony.

23 It just – really it's a case-by-case basis.
24 It's kind of comparing apples and oranges. There –
25 we're different museums. We're very unique in our

1 – in our policies, and we just have – they're just
2 different. It's the same law, but we have
3 different policies and undoubtedly we will probably
4 come up with a – we'll both come up with a policy
5 on culturally unaffiliated, but it's how it will
6 look that will continue to maintain those
7 differences; not bad, they're just different.

8 ROSITA WORL: Okay. Thank you. Do we have any
9 questions? Any questions?

10 I just might encourage you – of course, you've
11 probably already looked at our CUI regs. We worked
12 on it for many, many years. It's not perfect, but
13 I think it's a good start that you might consider.

14 JACQUETTA SWIFT: Thank you very much. We're
15 looking forward to putting a resolution to this
16 soon. Like I said, we've really been doing this
17 since the mid-nineties. We've been doing this type
18 of work, but it wasn't – it didn't have a title to
19 it. It wasn't called culturally unidentified. It
20 was just that's sort of our standard operating
21 procedure and the work that we did, and it's – I
22 guess to put in a little plug there, it's good that
23 maybe the national regs caught up to that.

24 ROSITA WORL: Okay.

25 JACQUETTA SWIFT: Thank you.

1 ROSITA WORL: Thank you very much for being
2 here.

3 Is the committee ready for a recess? Are we
4 ready for a recess?

5 DAVID TARLER: Could we, Madam Chair?

6 ROSITA WORL: Okay. Ten minutes recess.

7 **BREAK**

8 ROSITA WORL: Shall we go ahead and call the
9 meeting back into order? We are now back in order.
10 Did you have a comment?

11 DAVID TARLER: And Madam Chair, if I may, I
12 would like to remind all the attendees, if they
13 would, to please sign the sign-in sheets at the
14 entrance to the Grant Auditorium. Thank you.

15 ROSITA WORL: Thank you very much. I just
16 wanted to make one other comment. In looking at
17 the GAO report on the Smithsonian, I had made – I
18 commented on the 50 objects that were repatriated,
19 but I failed to mention that Natural History has
20 repatriated some 5,040 human remains or more,
21 actually, and they have actually repatriated
22 something like 182,820 funerary objects. So it
23 seems, you know, the record may not be what we want
24 on the cultural objects, but insofar as their
25 priority seems to be, you know, really working on

1 the human remains and funerary objects, so we want
2 to acknowledge, you know, their efforts in that
3 area, as well.

4 So do we have any further comments before we
5 move on to our annual report? Do we have any
6 further comments from this morning, any of the
7 agenda items?

8 Okay. If not, why don't we go ahead and look
9 at our 2010 report, and this year our 2010 report
10 we delegated Sonya Atalay and Adrian John to
11 develop the report for us, a draft report for us.
12 As we noted, Sonya had intended to be at the
13 meeting, but her ceremonial duties at home required
14 her — she just wasn't able to leave when she
15 thought she was going to, so she fully intended to
16 be here, but we do have Adrian. So we have now the
17 2010 draft annual report before us.

18 **ACTION ITEM: PRESENTATION, DISCUSSION, AND APPROVAL**
19 **OF THE REVIEW COMMITTEE'S ANNUAL REPORT TO CONGRESS**
20 **FOR 2010, AS REQUIRED BY NAGPRA**
21 **REVIEW COMMITTEE MOTION**

22 ADRIAN JOHN: As Sonya is not here, she was
23 going to do the presentation on the report, but I'd
24 like to make a motion to adopt it.

25 ROSITA WORL: We have a motion to adopt. Is

1 there a second to that motion?

2 ERIC HEMENWAY: I second.

3 ROSITA WORL: Okay. We now have it on the
4 table, let's open it up for discussion. The report
5 was distributed to the Review Committee members,
6 and I think we've all had an opportunity to review
7 the report. We've made some references to the
8 report this morning, insofar as our references to
9 the GAO report. Are there any other items that –
10 on the report that the committee would like to
11 review or discuss?

12 We all agree that it's a good report. That
13 Adrian and Sonya did a great job in pulling this
14 together and on a timely basis for us, too.

15 So I just will note that for the 2010 report
16 that both Alex and LindaLee were not present at
17 those meetings, but they have had the opportunity
18 to review the report. And they may have some
19 comments that they may wish to offer on that
20 report, even though they weren't here, they've had
21 the benefit of reading it and may have some
22 comments. Maybe they have some insights that might
23 be helpful to the committee. Any comments?

24 LINDALEE FARM: I have no comments, Madam
25 Chair.

1 ROSITA WORL: Thank you.

2 ALEXANDER BARKER: I have two comments.

3 ROSITA WORL: Go ahead, Alex.

4 ALEXANDER BARKER: Thank you, Madam Chair.

5 I have two comments. One involves the
6 suggestion that the Review Committee should seek
7 binding authority for its determinations, and that
8 would be a concern for me for two reasons. One is
9 that this committee was established – see, there's
10 a reason I didn't do this. This committee was
11 established very specifically –

12 ROSITA WORL: Let's see if we can give you
13 another mic.

14 ALEXANDER BARKER: Okay. Is this better?

15 CARLA MATTIX: Yes.

16 ALEXANDER BARKER: I have two concerns
17 regarding the suggestion that the Review
18 Committee's determinations should be binding. The
19 first is simply that the nature of this committee
20 is supposed to facilitate the resolution of
21 disputes between Native communities and museums,
22 when such differences exist. And creating a
23 binding authority for the committee doesn't really
24 facilitate a resolution; it simply enforces a
25 decision. And I think that instead of bringing

1 tribes and museums together in meaningful
2 communication, it's simply going to widen an
3 adversarial gap. Second, and much more
4 specifically, I don't really believe it's within
5 the purview of the committee to expand beyond the
6 boundaries set by FACA for an advisory committee to
7 then have binding authority on parties. So those
8 would be concerns about that specific request
9 within the 2010 report.

10 Second, is a concern was raised that rejects
11 many of the criticisms of the GAO report,
12 specifically the concern that's been raised that
13 some view the Review Committee as having a bias or
14 as not equally weighting the interests of different
15 parties. I'm always concerned when a group is
16 criticized for something and then dismisses the
17 criticism as being invalid. I think there's a
18 certain amount of critical self-reflection that has
19 to be involved in consideration of why those
20 concerns were raised. The perception of fairness
21 is crucially important for the committee, and
22 again, because it was established to balance the
23 interests, the valid interests of tribes and Native
24 communities to reclaim ancestral remains on the one
25 hand and the interests, not just of museums and

1 scientific organizations, but of the public to
2 understand and have access to their past, the
3 maintenance of fairness is crucially important.
4 And in that regard – and I want to be clear, this
5 isn't simply a matter of assertions of fairness.
6 In going over the Report to Congress, I don't see
7 the concerns of museums reflected in the report,
8 which either means no concerns were raised or they
9 weren't reflected in the report, and I don't know
10 which is was. But that's also a concern. Thank
11 you.

12 ROSITA WORL: Great, thank you very much.

13 Do we have any further comments?

14 It may be that this – the authorities of the
15 committee may be something that we should have a
16 discussion on, a further discussion. I think we've
17 had it in 2010, and that's the basis – it rose from
18 that discussion. But now it seems that we do have,
19 you know, some other views expressed, and I think
20 it would be worthy of this committee to pursue
21 that. I know it has been raised in a number of
22 different places, and I actually am aware that when
23 the Act was being first discussed it was on the
24 table. So if it arises again, it's an ongoing
25 issue, and I think, you know, we may be the body to

1 begin to have that kind of a discussion as to how
2 we might proceed. So are there any other – and
3 thank you very much for your comments.

4 ALEXANDER BARKER: Thank you.

5 ROSITA WORL: I do appreciate it, and I think
6 your comments about fairness and balance are well
7 taken. I appreciate that. So any further
8 comments?

9 Okay. Are we ready for the question?

10 All those in favor signify by saying aye – oh,
11 excuse me, Carla. Go ahead.

12 CARLA MATTIX: I just wanted to point out two
13 things I saw in reviewing the draft. I realize
14 it's your report, but just for your information you
15 may want to clarify in recommendation number two
16 regarding increase of civil penalties, right now
17 civil penalties do not apply to Federal agencies,
18 so –

19 ROSITA WORL: Carla, would you give us the page
20 number?

21 CARLA MATTIX: That's page 16. So possibly one
22 solution is just to strike that first sentence, or
23 if the meaning is to have some sort of other
24 enforcement mechanism for Federal agencies, it
25 would actually have – there would have to be some

1 other consideration for that enforcement measure
2 because civil penalties are not enforced against
3 Federal agencies.

4 ROSITA WORL: So you're recommending that we
5 strike -

6 CARLA MATTIX: It just - it depends on what the
7 intent of that recommendation is. If your intent
8 is to increase civil penalties for museums, then I
9 would recommend striking the first sentence. If
10 your intent is to come up with some enforcement
11 mechanism for Federal agencies, then you would have
12 to revisit what is said in that paragraph.

13 ROSITA WORL: Do we know if Sonya is available
14 via phone?

15 SHERRY HUTT: No, she's not at home. She's at
16 a ceremony.

17 ROSITA WORL: Well, let's just take a few
18 moments to look at that. And Carla, you were
19 recommending deletion of the paragraph or a phrase?

20 CARLA MATTIX: I needed to get clarification on
21 the intent of that recommendation. If the intent
22 is to have a recommendation for some enforcement of
23 compliance of Federal agencies, which it appears
24 that the bulk of that recommendation is looking at
25 that, then the civil penalty option would not be

1 available for Federal agencies. If the intent is
2 to just generally increase the level of civil
3 penalty investigations, something along those
4 lines, then I would recommend just striking that
5 first sentence.

6 ROSITA WORL: From my – I mean, I think what we
7 have consistently said is that we were concerned
8 about Federal agency compliance. And so the issue
9 is that we cannot exert civil penalties on
10 agencies, so we would want to remove that
11 reference.

12 (Inaudible comments.)

13 ROSITA WORL: What option do we have?

14 CARLA MATTIX: The option is, I think, to
15 either delete the first sentence, and then that
16 particular recommendation relates to increased
17 civil penalties for museums. The other option is
18 to have a recommendation that just generally says,
19 you know, the development of an enforcement
20 mechanism for Federal agencies.

21 ROSITA WORL: What I think we should do is
22 let's – we will – let's postpone this. We'll defer
23 this for right this very minute, and then we'll get
24 together and then try to rework it.

25 CARLA MATTIX: Okay.

1 ROSITA WORL: Okay.

2 CARLA MATTIX: And while you're at that, just
3 one other – on page 17, you may want to clarify
4 recommendation 6, just to – you know, I think the
5 intent is clear in the title of that
6 recommendation, but maybe just read that paragraph
7 and make sure that the paragraph actually explains
8 that recommendation.

9 ROSITA WORL: Okay. We'll suspend this for
10 right now and then we'll bring this back after
11 lunch. And I would request that Adrian and Eric
12 work on this and then maybe we'll – okay?

13 ALEXANDER BARKER: Madam Chairman?

14 ROSITA WORL: Yes.

15 ALEXANDER BARKER: While they're doing that,
16 could I also ask that they clarify a little bit of
17 what's meant by recommendation –

18 ROSITA WORL: Could you use your mic again,
19 sorry?

20 ALEXANDER BARKER: Can I also ask that they
21 clarify precisely what's meant in recommendation 9,
22 which calls for auditing capabilities for NAGPRA?

23 ROSITA WORL: Okay. We'll review those. Thank
24 you.

25 Maybe we could have someone check that mic,

1 you know, to see why it's not working? Thank you.

2 So with that, we will go ahead and we'll just
3 delay action on this, and we will assign this to
4 our subcommittee to work on it during lunchtime and
5 then we'll bring it back right after lunch. And if
6 there are no objections, we'll go right ahead.
7 We'll take another agenda item at this point in
8 time. Okay.

9 DAVID TARLER: Yes, Madam Chair, may I
10 recommend that at this time we have the National
11 NAGPRA Program's report for the implementation of
12 NAGPRA in Fiscal Year 2011.

13 ROSITA WORL: Okay. That sounds good. If
14 there are no objections to that, we'll go ahead and
15 have the report. Thank you.

16 **REPORT: NATIONAL NAGPRA PROGRAM REPORT ON THE**
17 **IMPLEMENTATION OF NAGPRA IN FY 2011**

18 **SHERRY HUTT**

19 SHERRY HUTT: Hello again, to the panel. I
20 have basically two aspects to the report. One is
21 the leading off of the midyear report of actions in
22 NAGPRA, and I'll do that first. And then secondly,
23 I have the sort of – what we call the homework
24 assignment list from the last meeting that we can
25 address and look at as well. So based on the

1 progress midyear, you've received in your materials
2 a draft midyear report. And the reason we always,
3 for the benefit of the new members as well, the
4 reason we always call this a draft report is
5 because we present it to you all. If there's
6 something we left out, something that in the way
7 we've arranged the data that you find confusing or
8 should be different, then this is your opportunity
9 to tell us before we make it a final report. And
10 then after the meeting, when we make any changes,
11 if there are any, then we put it up on the website
12 and people rely on this data in their reports. So
13 we always want the report to be a good
14 communication piece on behalf of what's going on
15 out there.

16 And there are two aspects really in this
17 report. We are reporting what the National NAGPRA
18 Program is doing, but also it's a reflection of,
19 since we are the repository for the compliance data
20 of Federal agencies and museums and their
21 repatriation activities, it gives you a thumbnail
22 of what the national activity is that's going on.
23 So if there are other pieces that you would like to
24 see reflected in this report that aren't here, this
25 is a good time to give us that feedback so that we

1 can contemplate that for the end of the year report
2 that gives you the data from — as of September 30.

3 I can tell you just as a for instance, when I
4 first came to the program, the Review Committee
5 indicated that the numbers they'd been receiving
6 were cumulative, but nothing was annualized. So
7 they couldn't tell what had happened in the — in
8 any period of time like the last year. It all was
9 just a cumulative number, and they didn't know what
10 activities the program had done. So we report
11 numbers in terms of cumulative and last rating
12 period, which in this case would be the last — the
13 first six months of this year. And the fiscal year
14 is October 1 to September 30, so that's how we
15 organize this report. We hope that you'll find
16 that it dovetails into doing your annual Report to
17 Congress quite well, because you get the data that
18 you can then use for your end-of-year report.

19 The highlights, and this is a lengthy report,
20 I'm not going to read through it all, but I'd like
21 to highlight some pieces. And one is — and I was
22 checking my email, I don't know how many people are
23 Federal Register groupies and go on the Federal
24 Register first thing every morning to see what's
25 published, but we are. And we have hit what we

1 feel is a milestone in NAGPRA, and that is today
2 the 2,000th NAGPRA notice publishes, actually there
3 will be 2,001 NAGPRA notices. When we say NAGPRA
4 notices, we mean Notices of Inventory Completion
5 and Notices of Intent to Repatriate, a cumulative
6 2,000 notices in the history of NAGPRA, and those
7 notices represent almost 45,000 individuals, who
8 are now available for repatriation as – I'm going
9 to stop just a moment in the report and give Vice
10 Chairman Wright an opportunity to be settled.

11 ROSITA WORL: We want the record to reflect
12 that we've been joined by our other Review
13 Committee member. Welcome.

14 MERVIN WRIGHT, JR.: Thank you, Rosita.

15 ROSITA WORL: We understand you had delays in
16 your plane. Mervin Wright.

17 [Mervin Wright, Jr., joined the meeting at
18 10:50 a.m.]

19 SHERRY HUTT: And we are giving the midyear
20 program report. So these 2,000 notices account for
21 about 45,000 individuals – we call them MNI,
22 minimum number of individuals – and over a million
23 associated funerary objects with those individuals,
24 plus hundreds of cultural items, sacred objects,
25 objects of cultural patrimony and objects which may

1 be both cultural patrimony and sacred. And so that
2 is a – that represents a tremendous amount of
3 activity between Federal agencies and museums
4 working with tribes across the country, and we'd
5 like to reflect on that. In the program I intend
6 to have a little ceremony back next week because
7 Jaime Lavallee, who many of you know is the Notice
8 Coordinator, singlehandedly replaced four people
9 who used to do notices, and the number of notices
10 published has been very strong since she came into
11 the program. And I would attribute that to the
12 credibility of this committee and the work that is
13 done to portray that integrity of process that
14 makes the agencies and the museums work together
15 with the tribes – not makes them, but encourages
16 that, and that something will occur at the end,
17 that we will publish notices and that they will be
18 regarded. Jaime has singlehandedly been
19 responsible for 830 of those 2,000 notices since
20 she came to the National NAGPRA Program, so that's
21 a milestone.

22 The other piece that I'd like you to know is
23 that the 2011 grants recipients will shortly
24 receive letters, just as soon as the Assistant
25 Secretary reviews the package and makes a

1 determination on the awardees, but the grants panel
2 has completed its work for 2011 and has awarded a
3 number of grants to museums and Federal agencies –
4 not Federal agencies, excuse me – museums and
5 tribes to carry out the work of NAGPRA, and that we
6 do have grants for at least two or three projects
7 that the panel found worthy of funding that may not
8 be funded because we simply ran out of funds. I
9 have not reported that to you since 2006.

10 So it's – it's happening and it may continue
11 to happen at this point because the amount of
12 funding for grants has remained constant but the
13 number of repatriation grants is increasing. And
14 those repatriation grants, as I told you earlier
15 this morning, are up 300 percent. And again, I
16 attribute that to the hard work of the museums, who
17 are working with tribes, and also Federal agencies.
18 We have changed our policy for 2011 in National
19 NAGPRA. If a tribe seeks to repatriate human
20 remains and objects from a Federal agency,
21 typically the Federal agency funds that
22 repatriation. But in these tense times, financial
23 times, the agency may simply not have the money.
24 We find typically that Federal agencies are more
25 than willing to fund the costs, as are museums and

1 universities, to fund the cost of repatriation.
2 But if they can't, we certainly don't want those
3 ancestors not to come home or the objects not to
4 come home for failure of funding. So the policies
5 of the National NAGPRA grants program, or I should
6 say the grants program, the repatriation program,
7 is to allow museums – excuse me, allow tribes to
8 request funding to travel and repatriate human
9 remains and objects from Federal agencies where the
10 Federal agencies lack the funding. And we usually
11 make a call to the agency and see if they've got
12 the funds, but if they don't we don't want the –
13 want the repatriation not to happen. So you have
14 seen, as I said this morning, a 300 percent
15 increase in the number of repatriation grant
16 requests.

17 The other matter that I want to call to your
18 attention is on the databases, there is one human
19 being in the National NAGPRA Program who is our
20 national database master, who is also our web
21 coordinator, and that is Mariah Soriano, and she
22 now administers seven databases. The objective
23 that she has set out for herself is to – and we in
24 the Program, is to have all the compliance
25 materials on the web. So what we have, and for

1 those who are new, we have of course the culturally
2 unidentifiable database, the inventories of those
3 who are not culturally affiliated. The database of
4 all the inventory information for those individuals
5 who are culturally affiliated, and we find that's
6 helpful for – we get many calls from small museums
7 that just don't have the staff and they really like
8 to see what other museums have decided regarding
9 individuals from the same sites. It's very helpful
10 to museums. And the notices are on the website.

11 The summaries are now on the website, so if a
12 tribe said, who all sent us summaries back in '93,
13 we don't have all those documents, they can go on
14 the website and sort by the name of the tribe and
15 see all the institutions that pop up. That won't
16 tell them everything that's in that summary but at
17 least what institutions have identified them. We
18 also have Notices of Intended Disposition. We
19 don't talk about that a lot in the Review Committee
20 because that's under Section 3, which is Federal
21 agency action. When Federal agencies make
22 decisions on new finds on the land, they publish in
23 the newspaper, they send us copies, we put that up.

24 And we have also increased the capacity within
25 those databases of inventories and notices, we're

1 trying to link them, and also to regard in the
2 notes column whether or not an individual has been
3 in a notice and has been repatriated. So hopefully
4 all that information will be up there.

5 And then we have the database that really
6 needs to be updated that we're working on as well,
7 and that's the consultation database, and that's
8 where the tribes – the tribal contacts. If an
9 agency or a museum contacts us and says what – how
10 do we go about this, I mean, agencies have been
11 pretty much into this now, but say a small museum
12 that doesn't have many resources. They can go to
13 the National NAGPRA website, look for maps that
14 identify the tribe, so if they know the area where
15 the individuals or items came from, those maps will
16 identify the tribes that aboriginally occupied the
17 area. They then go to the consultation database to
18 look up the names of those tribes and look at the
19 contact people as a starting point to consultation.
20 It's not a complete list in terms of who they
21 consult with but at least it's a helpful starting
22 point. And museums that have contacted us and
23 we've walked them through those resources have been
24 very appreciative, because they just don't have the
25 staff to otherwise do that.

1 What we're doing now, and the big project now,
2 is to go back and actually digitize the summaries,
3 digitize those inventories, and get them up on the
4 website, so that you can have the actual data. New
5 inventories coming in and amendments to
6 inventories, as additional decisions are made or
7 additional finds are made in the collection, to the
8 extent that we get those electronically that's
9 helpful and we'll be able to put those up
10 electronically as well, but two things that
11 Mariah's working on. She has one part-time college
12 intern helping her, and that is to get all of these
13 massive documents that fill an entire storage room
14 and get those digitized.

15 The other thing that we're working on is a
16 reporting interface. We're going to start this
17 with Federal agencies because there's fewer of them
18 and then move it to museums. And that is where if
19 a museum or Federal agency – we'll start with Feds
20 – has an amendment to their inventory or their
21 summary, they can go online, report the statistics,
22 and then the database master can just look at that
23 and then move it into – merge it into the existing
24 data, so that we don't have any errors in basically
25 data entry. The data is entered by the originator

1 and moved in.

2 One of the things that the GAO indicated in
3 their report was that at one point they said there
4 were discrepancies between program data on the web
5 and what the Federal agencies told them they had,
6 and because of that the conclusion that they made
7 was that the data that the National NAGPRA Program
8 has is not credible or reliable. In fact, we've
9 gone back and found that what has happened is that
10 the agencies may have updated their information in
11 the agency but not sent that to us, so our data is
12 not updated. And the more we get online, the more
13 it's transparent, the more another level of issues
14 arise, but it's good because those issues are
15 evolving and becoming more focused and there's
16 nothing like getting it all out there for people to
17 see what we have to prompt some clarifications.

18 We also are finding in this data process that
19 a museum may list something as belonging to a Fed
20 or a Fed may list it as really going to the museum,
21 but they need to talk to each other. And so we
22 sort of facilitate that coming together. Our
23 position in National NAGPRA is that the individual
24 needs to be listed on someone's inventory, whether
25 it's the museum or the Federal agency. They decide

1 and they'll tell us, but it can't be neither. It
2 can be one or the other but not neither. And
3 occasionally you'll see notices that are both
4 Federal agency and museum, where they're working
5 together and they don't want to have to make the
6 distinction as to who has control, so they put them
7 both in the notice, and that's fine.

8 I think that those are some of the bigger
9 pieces. You know that since Bob Palmer, our
10 investigator, said his adieu to you in November
11 that he has not been replaced. We're trying to
12 work with a contractor to do some civil penalties
13 work toward the rest of this fiscal year, and then
14 see how we're going to institutionalize that going
15 forward. So that remains sort of an open question.
16 And then, of course, it's the reports that we give
17 you to hopefully assist you in recommendations that
18 you would make to us and to those who appear before
19 you in terms of activities, in terms of focus.

20 We focus now on individuals that are listed on
21 inventories, who are culturally affiliated. They
22 should all be in notices. And to the extent
23 they're not, the data is collected as to where the
24 discrepancy is, as sort of a first homework
25 assignment.

1 So that's – do you have any questions on the
2 midyear report? I kind of touched lightly on a
3 number of pieces.

4 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

5 ROSITA WORL: Does the committee have any
6 comments, questions, on the report?

7 I have a couple. On – I see that on your
8 trainings that almost half of them have been by a
9 webinar, and I'm just wondering what the feedback
10 has been and how many people are participating in
11 those.

12 SHERRY HUTT: We have had from 25 to 200 people
13 on webinars, depending on the topic. We recognize
14 that webinars are not a complete substitute for in-
15 person training and we're still doing in-person
16 training to the extent that funding allows. But
17 webinars not only save travel costs for the program
18 and enable us to do more, but it also saves travel
19 costs for the participants. Now, the – in grants,
20 the – Sangita Chari, the Grants Coordinator, holds
21 a training every year on a webinar for all of those
22 who are grant recipients, so they can kick off
23 their grant year in terms of getting tips on making
24 sure that their grant projects will be successful
25 and their reporting obligations, their interim

1 reporting obligations.

2 So when you do a webinar, you can be more
3 focused in a topic. You can have a – for instance,
4 we have an upcoming webinar that will deal with 106
5 in NAGPRA, 106 the Historic Preservation Act and
6 NAGPRA. That's a – that's a pretty focused area,
7 but it's a big issue to those who have impacts on
8 the land and new discoveries. And we are tapping
9 for that, not people within our program, but
10 experts in the area. We have a Park Service person
11 who does a lot of this work, Chuck Smythe, and he's
12 going to team up with Valerie Hauser from the
13 Advisory Council, and 106 is what they do. So we
14 are tapping people with finite expertise – that
15 have general expertise, but I mean they have
16 particularized expertise that is of benefit to our
17 various NAGPRA communities. And with webinars you
18 can do that.

19 You can do a webinar every month on a
20 different topic. When we did the webinar on the
21 CUI rule, we had 200 people participating because
22 it was of general interest. We're going to repeat
23 that. We're going to have another webinar on the
24 CUI rule on July 20th and that will be another one
25 of these situations where people can ask their

1 general questions. And I must say we couldn't do
2 this – doing this means there's staff resources.
3 We have staff who coordinate it and actually
4 physically are in the room to do it, and we could
5 not do it without the contract enhancement that we
6 have with Lesa Koscielski because she handles our
7 registrations and moves us forward on all of these
8 telephonic communications. And I would say that
9 we've been supported by the National Park Service
10 in the budgeting that we requested because I
11 requested funds specifically for the ability to do
12 these webinars and those funds were put into our
13 budget.

14 So it doesn't replace in-person training, but
15 we find it to be critically important. And I would
16 hope that we are successful. Now, a piece that you
17 have asked us for in the past, and one that we seek
18 to institute, is the evaluation, the feedback
19 process. And that we don't have for you in a
20 report today, but it was a question that you had of
21 our training generally. We take that very
22 seriously, and we do hope to have the pieces in
23 place to give evaluations so we can get that kind
24 of feedback.

25 ROSITA WORL: Great. I like the idea of it. I

1 think it would helpful also to include the number
2 of participants, because it seems like, you know,
3 we're able to reach out to a larger group of
4 people, you know, through this process.

5 SHERRY HUTT: I think on the training page,
6 let's see, on page — oh, we didn't break it down by
7 training event, but we can certainly do that in the
8 final report. We have indicated on page 11 of your
9 midyear report, the trainings that we've had and
10 the total of those trained, the total of
11 participants is 778 for the first half of the year.
12 We could break that down further in the final
13 report by putting how many for each of those
14 training events. We have that information.

15 ROSITA WORL: Yeah, I think that would be
16 helpful to — as we evaluate, you know, the
17 webinars.

18 The other thing that I would recommend, and I
19 think I've asked this before, is that we include
20 the status of disputes.

21 SHERRY HUTT: Yes, now there are two reports
22 that were given to the Review Committee: what we
23 refer to as the Sally Butts report, Sally was an
24 intern with us and did a report of an analysis of
25 all of those; and also the Lauren Miyamoto report

1 on large – the handling of large collections. And
2 when we – this is sort of disclosure of everything
3 that we do in National NAGPRA. There's a lot of
4 technical pieces. There might be some legal pieces
5 in there. They are representations of the
6 Department, so we run them all by counsel. And we
7 have really burdened counsel, as you will see as we
8 go through some of what we're talking about these
9 two days, how much work we put on counsel and we
10 don't have those reports for you reviewed, but we
11 should shortly.

12 I should – I neglected to mention, and I would
13 be remiss if I did not, one of the pieces that has
14 taken so much of counsel's time in working with us,
15 and that is regulatory review. We have three
16 pieces pending review in the Department of the
17 Interior right now, and one in development, that
18 pertain to regs. One is the recommendation three
19 of the GAO report is that amendment to the
20 regulations of NAGPRA dealing with the definition
21 of tribes. It's 43 C.F.R. 10 (b) subpart (2) that
22 Stephen referred to –

23 CARLA MATTIX: 10.2 (b).

24 SHERRY HUTT: – 10.2 (b), I'm sorry, and we had
25 hoped that that would have gone to the Federal

1 Register and been published so that you could
2 actually review it at this meeting. We fell short
3 of that. It's still under review at the
4 Department, and on breaks, counsel have been
5 following up as they can. I mean, it's a -- we talk
6 almost daily in terms of where things are in
7 progress and moving things along. And that's
8 something you maybe don't see, but it occupies a
9 lot of program time and counsel's time.

10 The other piece that is pending in Interior
11 are some technical amendments. Technical may not
12 be the right term, but small amendments --

13 CARLA MATTIX: Minor.

14 SHERRY HUTT: -- minor amendments to the
15 regulations generally that we hope to have, again,
16 published so you can review them as proposed before
17 they became final. And we -- they're still under
18 review at the Department.

19 And then the third piece is the rule that's
20 been in progress, in development for five years.
21 It's a reserved section from the 1995 regs. And
22 that is what we call 10.7, so that's 43 C.F.R.
23 10.7. That is the disposition of unclaimed human
24 remains on Federal lands. So we talk a lot in
25 these meetings about the collections process, but

1 when there are new discoveries on the Federal
2 lands, the Federal land manager has the obligation
3 to make a disposition determination in the first
4 instance by working with tribes, consulting with
5 the possibly affected tribes and publishing a
6 newspaper notice, and transferring – the law says
7 ownership, transfer of ownership, transfer of
8 control to the tribe. What do you do with those
9 for whom there is no claimant or no identified
10 potential disposition tribe? How do you really
11 define what is unclaimed, and what do you do in the
12 case of unclaimed? What are the agency
13 responsibilities with regard to use and access?

14 These are matters that Federal agencies have,
15 quite frankly, wanted guidance on. We have not
16 received complaints per se from tribes. This would
17 be an indication of a real tribute to the Federal
18 agencies that they are working with tribes.
19 Otherwise, we would have sort of a litany of
20 complaints that we needed to address in the regs.
21 We don't have that. We really have more of an
22 interest from the Federal agencies asking for
23 guidance so they don't run afoul of what they
24 should be doing. They want sort of a best
25 practices piece, and we have developed this rule

1 over the period of five years with a committee made
2 up of Federal agency people who do this work.

3 That rule was thoroughly reviewed in draft
4 form, thoroughly reviewed by counsel. We submitted
5 it in March to the Department of the Interior
6 hoping to publish it as a proposed rule. And for
7 those of you who are not familiar with the Federal
8 regulatory rulemaking process, what happens is that
9 it's published in the Federal Register as a
10 proposed rule, there's a 60- or 90-day comment
11 period, and we want those comments periods to occur
12 during the Review Committee meeting so that you can
13 comment upon the rule. Your comments, then, are of
14 record, and then we develop -- when the comment
15 period closes, we develop the final rule and we
16 regard those comments in the preamble. So if you
17 look, for instance, at the rule for culturally
18 unidentifiable that was promulgated in 2010, the
19 rule itself is only 10 pages, but there are 100
20 pages of response to all of the many comments that
21 were received and legal opinions by counsel that
22 are the opinion of the Department by virtue of our
23 publication of that rule and that preamble, so that
24 preamble is very important, and all of the comments
25 must be regarded in there. So that process is in

1 its initial stage. We'd hope we'd have 10 (b) (2) –
2 10.2 (b), 10.7 and the minor amendments, technical
3 amendments for you today. All those three pieces
4 are under review at the Department.

5 Now, Madam Chair, I would like some guidance
6 here on this. If they're released by the
7 Department for publication in the near future, we
8 want – those pieces where we need your comment,
9 which would be 10.7 and the minor amendments, on
10 those two pieces we want Review Committee comment
11 in the comment period. So we have two choices: one
12 is to hold back publication until, say, the first
13 of October so that the next Review Committee
14 meeting will fall in the comment period; or if
15 they're published fairly – if they're available to
16 be published fairly soon, should we have a
17 telephonic meeting for the purpose of imposing your
18 comments on the rule? And what we don't know is
19 when they will be ready to go to publication.
20 Obviously if it's getting close to the next
21 meeting, it's not a factor, but if it's relatively
22 soon, do you want us to hold off on those two
23 pieces until you're next in session, or would your
24 preference be to have a telephonic meeting to make
25 your comments?

1 ROSITA WORL: What's the wish of the committee?
2 I mean, it is part of our responsibility to offer
3 advice on and comments on the regulations. So we
4 could -- there are two proposals: one, they could
5 hold off on the regulations and we could comment on
6 it at our next meeting, or we could have a
7 telephonic meeting. What's the wish of the
8 committee?

9 Mervin?

10 MERVIN WRIGHT, JR.: I would suggest to move
11 forward and, you know, if we have to schedule a
12 telephonic meeting, then we should do that. I
13 think the sooner we get regulations moving forward,
14 I think the better off your office would be with
15 regard to achieving some of the deadlines and
16 milestones that have been put out there. And plus
17 maybe save on some grief and some criticism that
18 may come your direction. So it would probably be
19 better to just try to move it forward and do a
20 telephonic response.

21 SHERRY HUTT: Would -- on 10.7, of course, you
22 commented in the development of it. If these were
23 available for publication, say, in the next 60 days
24 and then we would also need to publish a notice of
25 a Review Committee meeting too, because it's still

1 a public – it may be telephonic but it's still
2 public, and we give prior notice and all of that.
3 So that would mean that your meeting would be, say,
4 within 90 days, which is still 90 days before the
5 next Review Committee meeting. So does that make
6 sense if something happens within the next 60 days,
7 we publish a meeting notice and work with you all
8 to get a telephonic meeting date, but that if it
9 comes – publication comes after that that we just
10 wait until the Review Committee meeting? Does that
11 sound like a workable plan?

12 ROSITA WORL: Right. Does that make sense?
13 Okay. We'll go ahead, if there are no objections
14 we'll proceed with that, and we'll try to – we want
15 to move forward, but if for some reason they're
16 not, you know, released, then we would wait for the
17 – for our next meeting.

18 SHERRY HUTT: Okay. I appreciate the guidance.
19 I do. On the rule 10.2 (b), that's an interim
20 final, so that would go forward to publication in
21 any event as that – when that comes forward.

22 The other piece that we're working on in regs
23 we'll get to also on the agenda, and that is the
24 review of the entire slate of 1995 – the entire
25 slate of regs, as they are. We've had such a

1 number of comments from museums, tribes, Federal
2 agencies, the Justice Department, when they're
3 looking at things, and so the consultation with
4 you, the input from you when we get to that agenda
5 item to look at all of those regs. What we have
6 done so far is to have sort of listening – input
7 sessions from tribes, from the public and Federal
8 agencies, and those have assisted us in looking at
9 the pieces that may need some work, some retooling.
10 And that's what we hope to hear from you on, as
11 well.

12 So I think that's it for the program report.
13 Am I missing anything? Any questions further,
14 Madam Chair?

15 ROSITA WORL: Are there any further questions?
16 Well, thank you very – oh, go ahead, Merv.

17 MERVIN WRIGHT, JR.: Yeah, I had a question
18 regarding this second webinar that you mentioned
19 regarding the culturally unidentified rule.

20 SHERRY HUTT: Yes.

21 MERVIN WRIGHT, JR.: Has that been scheduled?

22 SHERRY HUTT: Yes, for July 20 from – is it
23 2:00 – 2:00 to 4:00 p.m. Eastern Time.

24 MERVIN WRIGHT, JR.: And then also I don't know
25 if you're going to be able to get a list of people

1 who submitted their names for comment. I know that
2 in having listened to the last – listened in on the
3 last webinar, you know, I didn't know who was
4 scheduled to comment and I – and in listening to
5 it, it sounded like we needed to notify your office
6 to get on the list to comment or to speak. And I
7 think if there are questions that the committee has
8 with regard to helping with the discussion, we
9 should be allowed to get those questions to you
10 guys and, you know, what level of formality are we
11 looking at when it comes to raising a question with
12 regard to the rule and, you know, what's the
13 likelihood of – I think part of the discussion last
14 time was should it be amended, and I didn't hear
15 any of the statements say, yes, and this is how it
16 should be amended. It was more of straightforward
17 comments being made or statements being made with
18 regard to the rule rather than, you know, inviting
19 suggestions in how we need to work on getting that
20 amended.

21 SHERRY HUTT: The webinar itself is a training
22 on the process of the rule, but it will not deal
23 with any amendments to regulations. It's strictly
24 a training on what does exist. On your agenda
25 later – is it later today or – tomorrow, you will

1 look at all of the regulations that currently
2 exist, and we will receive the Review Committee
3 input on that. And then – and in your materials,
4 if this is of concern and you're preparing for
5 tomorrow, in your materials is a compilation of
6 what we've heard so far from the public, from
7 tribes, from Federal agencies, in terms of matters
8 that they have keyed in on or focused on. And so
9 Lesa prepared that you for in bullet points, Lesa
10 and David prepared that for you, so you would have
11 some idea of what people have been saying, what
12 issues have been raised. So that's in your
13 materials.

14 ROSITA WORL: Okay. Is that it?

15 SHERRY HUTT: If there's no other questions on
16 the program report itself, Madam Chair, I know
17 there was the idea of action items that come from
18 the Review Committee. Would you like me to address
19 that at this time?

20 ROSITA WORL: Yes.

21 **ACTION ITEMS**

22 SHERRY HUTT: The Review Committee at any given
23 meeting has a number of what we might call homework
24 assignments, and we take notes on those. And just
25 so you know how we come up with this list, when

1 Lesa Koscielski does the transcript, she then does
2 minutes. Those all go up on the website. She then
3 performs a service for us, additional service for
4 us in giving us – she combs through the transcript
5 to look for each time the Review Committee gave us
6 a homework assignment or commented on something
7 that's a need to do, and gives us that list. And
8 I'll like to look at that, take a few moments here
9 to look at that list from the November meeting, and
10 give you an update on that.

11 There were items for the Review Committee
12 among itself and for the National NAGPRA Program.
13 As to the National NAGPRA Program, one of the
14 points you asked for in your November meeting was
15 that meeting materials be provided electronically
16 to the Review Committee members and be made
17 available to the public on our website prior to a
18 meeting. We have done that. We think that it's
19 worked fairly well, and we'd like to continue it in
20 the future. We hope that you all were pleased with
21 the result and would like that to continue to
22 occur.

23 The other piece is clarification of
24 information on repatriation grants, process, and
25 timing of applications. We have – when you go to

1 the website in the left-hand column, "What's New,"
2 we have the updated grants dates for applications,
3 the policies and procedures, all that's been
4 updated, and that's all accessible there on the
5 website.

6 And then the description of the Review
7 Committee nomination and selection process, we have
8 responded to the GAO. We have not done a separate
9 sort of document piece that's up on the website,
10 other than the reports we've done for the GAO and
11 to you all. But this might tie in with another
12 piece that you have, and that is a written outline
13 for decision-making processes for Federal agencies
14 that is on the website. Actually it could be
15 decision-making process, Federal agencies or
16 museums and tribes working together. In other
17 words, what's the decision tree, what's the
18 decision process in NAGPRA? We have not completed
19 this. It is not on the website. It is different
20 now that we have the CUI rule than it might have
21 been before. This is something that basically I
22 start in draft and then it goes through the whole
23 program people and over to counsel to review. So
24 we hope to have something to show you at your
25 November meeting, because it's - it would be a

1 helpful piece. There's no – we certainly agree
2 with you that that would be a helpful piece, but we
3 don't have it done at this time.

4 The other action item or homework assignment
5 was the distribution of NAGPRA at 20 videos. We
6 have – there were videos done at NAGPRA at 20,
7 which was a partnership event, not just the
8 National NAGPRA Program. And finding the means to
9 do that and to pay for it is something that George
10 Washington University and the partners are still
11 exploring.

12 As to the DVDs that the National NAGPRA
13 Program has produced, do you all have copies? Do
14 you all have your copies of those? The new members
15 don't have copies of those. We will get you a full
16 set, the eight-part set of the NAGPRA training
17 videos. And those were done again in being mindful
18 of travel costs. And they're best if they're out
19 in use. And to that end thus far, the Department
20 of Justice has a set that they are seeking to put
21 up on the Justice Television Network. Now that's
22 not just for Justice agencies, but they have – many
23 people don't realize this but the Justice
24 Department has sort of outreach programs or
25 community programs that the Justice Department is

1 tasked with, and working with tribes and
2 communicating with tribes is a piece of that, so
3 they're rather enthusiastic about getting these
4 videos up on the Justice website so that they can
5 be broadcast to tribes.

6 We also have – the BLM has a national training
7 center, and they have capacity to broadcast these,
8 and we're looking at web broadcast as well.
9 Certain technologies that we've looked at, and
10 we've looked at a number of technologies, and I
11 don't need to take you through all of them, that
12 just didn't work because of the size of them and
13 because we could do a schedule perhaps to broadcast
14 them at certain set times, and you would call in,
15 but to have them on demand is another piece. And
16 so it becomes access and price. But this is
17 something that we're continuing to explore.

18 If any of you have suggestions as to outlets
19 for these or where you feel having a set of these
20 would be put to good use and distributed, please
21 let us know. What we don't have, what we can't do
22 is make 2,000 copies of each of the videos. It's
23 just price-prohibitive. To send them out to all
24 the museums from whom we have inventories or
25 summaries or out to all the tribes or out to all

1 the Feds, we just simply don't have the financial
2 capacity to make that many copies of all of these
3 videos, nor would they perhaps all be well regarded
4 by all. Some are of more interest than others, and
5 let me just tell you what they are. There's an
6 overview piece, the making of NAGPRA, that was
7 shown at the NAGPRA at 20 – the celebration of the
8 twentieth anniversary of NAGPRA at the Department
9 of the Interior on the birth date last November.
10 Then there is one on consultation with tribes, on
11 grants, on how to write and manage a good grant,
12 notices and summaries and inventories, the
13 documents of NAGPRA, civil penalties, and Review
14 Committee, what am I missing? Am I missing one?
15 Is that eight?

16 STEPHEN SIMPSON: Decision making.

17 SHERRY HUTT: Oh, and decision making in
18 NAGPRA, yes, the sort of decision-making process,
19 I'm sorry, my star on the decision making. And
20 these videos are not merely talking heads giving a
21 lecture. They are individuals in each of them who
22 are the sort of host of the video, and then there
23 are inserts from people who were interviewed from
24 around the country that worked with NAGPRA and
25 members of the Review Committee figure prominently

1 throughout the videos, not just on the video
2 dealing with the Review Committee.

3 So for instance, a tribe that's interested in
4 applying for a grant may want just the grants
5 video, or a museum that's doing notices may want
6 just the notice video. And so we'd like to be able
7 to send these out on an individual basis, but we
8 don't have, as I said, 2,000 copies of each. We
9 have more like 200 copies of each. So we're
10 looking at distribution points where they can be
11 broadcast to reach a great number, and that's an
12 ongoing project. But it's top of the list, so to
13 speak, and it's a high priority within the office.

14 And moving on, I know time is – the other
15 thing, the other items that you requested was the
16 study of decision making, the Sally Butts report
17 that we've talked about. A database and web
18 report, including the number of – minimum number of
19 individuals remaining in collections, we have done
20 that in your midyear report. You'll see at the
21 back of that report some graphs and charts that
22 were done by Mariah Soriano. When you have a
23 chance to look at those, if you think those
24 communicate the information that you were seeking,
25 good, we'll keep doing that. If there's something

1 about them that you would like us to work on
2 presenting the information differently to be better
3 communicators of the data that you want, do let us
4 know. And then the other report was on the status
5 of NAGPRA compliance among museums with large
6 collections, the Lauren Miyamoto report. We hope
7 to have that out very soon as well. And then the
8 GAO report is on – was on the agenda. The DOI
9 consultation policy was something that you wanted
10 to talk about. That's on the agenda for this
11 meeting.

12 And also one other piece, and that was the
13 coalition of authorized representatives of Oklahoma
14 and Southern Indian Tribes that was presented in
15 the sort of community presentation last time and
16 you wanted us to look at that and comment. Do you
17 all have copies of that? That was done, and it was
18 done by a number of tribes with NATHPO, and there
19 were a number of – there were resolutions from
20 tribes. There were a number of whereases and
21 suggestions. And the whereases are based on the
22 GAO report and documented in the GAO report.
23 Basically they followed various conclusions drawn
24 in the GAO report; as to whether there is factual
25 basis for those conclusions, I'm not going to go

1 into that. But those are the whereases in the
2 resolution of the coalition of Oklahoma and
3 Southern Indian Tribes. But when you get to the
4 therefore and the recommendations, those are some
5 that may look familiar to you. Do you have copies
6 of that in your materials?

7 ROSITA WORL: I just want to ask the Review
8 Committee members if they have that. I don't have
9 it, and I don't know if I didn't print it out or
10 what, but I don't have it.

11 SHERRY HUTT: Okay. The materials, we will -
12 I'll make some copies, but the recommendations that
13 they make are to increase the maximum civil penalty
14 amount in NAGPRA, to appoint an ombudsman to work
15 with Indian tribes and Federal agencies to
16 facilitate compliance, that Federal agencies in
17 consultation with Indian tribes shall locate secure
18 reburial sites on federally protected land, that
19 NAGPRA grants shall support projects that involve
20 consultation with museums, universities, and
21 institutions that receive Federal funds and hold
22 Federal collections. The statute says - does not
23 say Feds, and that's why we don't do Feds projects,
24 but the recommendation is that there be funding for
25 Fed projects. That Indian tribes be provided with

1 a copy of information that Federal agencies submit
2 to the Park Service for inclusion in the culturally
3 unidentifiable Native American Inventory Database,
4 and of course, we're doing that digitizing. So
5 some of these we're doing. Some of these are
6 pieces that you may address in your report or in
7 your discussions. That there's a recommendation
8 that you develop a - that there be a NAGPRA tribal
9 consultation policy, which is something that you
10 will be discussing on your agenda. That the
11 Department of the Interior shall promulgate the
12 remaining reserved sections of the NAGPRA
13 regulations. And that there be support for NAGPRA
14 at the level of at least one million for NAGPRA
15 administration and four million exclusively for
16 NAGPRA grants to Indian tribes and museums. And
17 then that Federal agencies, museums and
18 institutions that receive Federal funds and have
19 NAGPRA-eligible collections from the homelands of
20 the Oklahoma's 39 tribes shall participate in
21 annual consultation meetings with these Indian
22 tribes in Oklahoma for the purpose of discussing
23 policy making, priority setting, funding resources,
24 and NAGPRA compliance.

25 So the recommendations that are made by this

1 report are some of the things you are already
2 doing, some of the things are on your agenda, and
3 some things that you may want to consider further
4 discussion on. So we will make copies of this and
5 have this to you after lunch so that in any further
6 discussions or in your 2011 Report to Congress or
7 whatever that you feel appropriate that you take
8 this report and regard the report as input to the
9 committee.

10 And I think the remaining items were really
11 for the Review Committee to discuss among
12 themselves; the GAO report, the 2010 Report to
13 Congress, the dispute resolution procedures, and
14 the communications by the National NAGPRA Program
15 with the Review Committee. So all of these are
16 pieces from November you put over and they are on
17 your agenda.

18 So now there was one piece, and I have to tell
19 you and ask your input on this, in looking at the
20 draft Report to Congress, there was an indication
21 that the National NAGPRA Program was going to pull
22 from past meetings information presented by
23 presenters on successes and barriers. And I have
24 to tell you quite honestly I don't recall that as a
25 homework assignment and it didn't appear in the

1 annotation from the – that we have from the minutes
2 and the transcript. If that's something that you
3 want us to do for the next meeting, we would need
4 sort of the assignment and some time parameters. I
5 mean, how far back do you want us to go? What do
6 you want us to look at? So as you look at that
7 piece in your 2010 Report to Congress as something
8 that you want from the national program, we're
9 fully pleased to do that for you, but if we could
10 have a little more guidance on the parameters of
11 that assignment it would be helpful.

12 Thank you.

13 ROSITA WORL: All right. Thank you, and thank
14 you very much. I really do appreciate the reports
15 on the action items. I've stated to the committee
16 that I really think it's a good idea for us to
17 either make a motion or to highlight, you know,
18 when we are asking the program to do something, so
19 that we can continue to have these status reports.
20 I think it would be helpful to do this on an
21 ongoing basis, continue reporting on those, that we
22 have not yet completed action or action is still
23 pending, and then of course, gosh, I didn't know we
24 were that busy last meeting and assigning you that
25 – more than 12 tasks. So we appreciate it very

1 much.

2 We are right now breaking – ready to break for
3 lunch, but Mr. DFO, do we have any announcements to
4 make?

5 **HOST ACKNOWLEDGEMENT/INVITATION**

6 DAVID TARLER: Yes, please, Madam Chair.
7 Again, I'd like to remind the attendees to sign in
8 on the sign-in sheets. And the National NAGPRA
9 Program and the Review Committee staff join in
10 thanking our hosts for their gracious hospitality
11 for this meeting, the Haudenosaunee Standing
12 Committee on Burial Rules and Regulations, the
13 Onondaga Nation, Syracuse University College of Law
14 and staff, and a special thank you to Christine
15 Abrams of the Seneca Nation and the Haudenosaunee
16 Standing Committee for coordinating this venue and
17 events. And I would like to call on Christine
18 Abrams to extend an invitation to you and to all
19 the attendees for this evening.

20 ROSITA WORL: Christine? And thank you again
21 for a very wonderful evening last night.

22 CHRISTINE ABRAMS: Yes, thank you. It was a
23 pleasure having you. I know I had a good time and
24 a good meal. So I'm sorry you missed it, Mervin,
25 but we'll make it up because we'd like to invite

1 you to the Onondaga Nation territory for a
2 traditional dinner and a social dance afterwards.
3 The dinner will start at 6:00 o'clock and the
4 social dancing will begin at 7:30. And I'd like to
5 extend my thanks to Tony and Wendy Gonyea and Steve
6 Thomas for helping with that effort, and I'm sure
7 it will be a good time, so extend it to the Review
8 Committee and everybody here. There are – if you
9 have your own car and would like to drive down,
10 there are maps up there in the back. Otherwise, we
11 have a van from the – supported by the Onondaga
12 Nation who will pick you up, and I also have a van,
13 and I know others have offered rides in their cars.
14 So if you like to attend, just meet us down in the
15 lobby of the hotel, the Genesee Grand Hotel. Even
16 if you are at another, just come on down and park
17 and we can give you rides. So we would like to see
18 you all there if you can attend. Thank you.

19 ROSITA WORL: Thank you.

20 CHRISTINE ABRAMS: Pardon me?

21 STEPHEN SIMPSON: What time again?

22 CHRISTINE ABRAMS: Six o'clock for the dinner,
23 it will be in the Nation cookhouse, and then the
24 dancing will be in the longhouse at 7:30.

25 STEPHEN SIMPSON: So we should me you at?

1 CHRISTINE ABRAMS: Oh, I'm sorry, 5:30, quarter
2 to 6:00. It will only take about 15 minutes to get
3 there. So and just for protocol to everyone, at
4 least for the women, that you – I don't think
5 anybody here will, but that you don't wear shorts.
6 Thank you.

7 ROSITA WORL: Thank you very much. So we'll
8 meet downstairs in the lobby at about 5:45. So if
9 there are no objections, shall we recess for lunch?
10 Is that – are we ready to do that, Mr. DFO?

11 DAVID TARLER: Yes, Madam Chair, and would you
12 like to resume at 1:00 o'clock or 1:15?

13 ROSITA WORL: Okay. We'll recess until 1:15.

14 DAVID TARLER: 1:15, thank you very much.

15 LESA KOSCIELSKI: There are some sheets
16 upstairs with some restaurants and directions –

17 DAVID TARLER: Oh, one more announcement, I
18 apologize to Lesa. She asked me to announce this.
19 There are maps of the north campus that include
20 food service areas up at the top at the entrance to
21 the hall, and please feel free to take a sheet.

22 **LUNCH**

23 ROSITA WORL: We will go ahead and call the
24 Review Committee meeting back into order, and we
25 were going to deal with the 2010 annual report, but

1 we were going to go ahead and defer that until
2 tomorrow morning. And earlier in the morning we
3 had also said that we would ask Mervin Wright to –
4 if he wanted to report on the Senate hearing, if he
5 had any comments he wanted to offer. So we will
6 turn it over to Merv.

7 For those of you who might not know, Mervin
8 Wright is the Vice Chair of the Paiute, and he was
9 invited to testify in that capacity before the
10 hearing.

11 **DISCUSSION: OVERSIGHT HEARING ON FINDING OUR WAY**

12 **HOME: ACHIEVING THE POLICY GOALS OF NAGPRA (JUNE**
13 **16, 2011)**

14 **MERVIN WRIGHT, JR.**

15 MERVIN WRIGHT, JR.: Thank you, Rosita. Well,
16 first, I want to say hello, a belated hello to the
17 rest of the committee members here. I had some – I
18 had my flight cancel yesterday in Chicago and was
19 able to get here this morning, so I'm grateful to
20 be here. It's good to participate once again with
21 the Review Committee. And our role with offering
22 the assistance and participating with different
23 activities directly related to the NAGPRA law,
24 yeah, I received a phone call from the Senate
25 Committee on Indian Affairs at the beginning of

1 June, I think it was June 2nd, stating that I was
2 going to be invited. And so I prepared my
3 testimony and I, you know, was a bit concerned with
4 my role here as a committee member, but it was
5 pretty clear from the Senate Committee Majority
6 Leader, Senator Harry Reid, is from Nevada, his
7 interest in wanting to hear my testimony, and the
8 committee staff basically told me that they wanted
9 me to be able to speak freely from a tribal
10 perspective with regard to the NAGPRA law and where
11 we're at.

12 And I thought that the theme was fitting,
13 *"Finding Our Way Home, Addressing Policy Goals of*
14 *NAGPRA."* And a lot of what, you know, what we've
15 discussed here at the committee level with the
16 staff reports and status reports of different
17 activities, there are certainly difficulties in
18 dealing with implementing the law. The last
19 meeting in November, face-to-face meeting we had,
20 one of the comments that I made was that, you know,
21 we have a law here with repatriation in the title,
22 and when you look at the database and the status
23 reports, it looks like we're not effectively
24 repatriating a number of the collections. And so,
25 you know, looking at the situation that we're

1 facing, the circumstances that are involved in the
2 proceedings, I mean just as it was said this
3 morning, you know, the decision-making process of
4 NAGPRA, you know, how are decisions being made.
5 And so as we start addressing that issue, I think a
6 lot of the – a lot of the difficulties that tribes
7 are having will probably be identified and, with
8 our hope, addressed with regard to making it
9 possible to start experiencing greater levels of
10 repatriation.

11 Going into – going into the testimony, you
12 know, the three primary concerns that I had as a
13 tribal leader was looking at how – Congress had the
14 right intention. They had – they had the right
15 idea of enacting a law that addresses our human
16 right as we look at it, you know, with respect to
17 treating our ancestors with respect. And we feel
18 today that we do have that human right to be buried
19 and to stay buried. And so, you know, with that
20 regard, you know, that was – that was the
21 foundation of my statement, and also to acknowledge
22 how our burial practices are conducted today, as
23 they were generations and generations ago. And
24 there is no difference between the way we conduct
25 what we call today our funerals. They're very –

1 they are communal, and everything that goes into
2 that burial belongs to that particular individual.
3 And so when we recognize the burials, our ancestral
4 burials, it's in that same regard. All of those
5 items, all of the things that are with that
6 particular individual has significant meaning as to
7 why it's present in that particular site.

8 We looked at — I talked about some of the
9 things that are going wrong with the law, from a
10 tribal perspective. And my testimony certainly is
11 available. I think it's online, I think, at the
12 website. I think all of the submitted testimony is
13 available.

14 I think one of the — the other part of our
15 foundation is that long ago, when our ancestors
16 were buried, put away, as some say — you know,
17 nobody, including the individual, ever left a will,
18 ever left anything to say that, hey, if somebody
19 wants to come dig me up later, you know, go ahead
20 and let them. Those things are not — you know,
21 they just — they were never thought of, and in a
22 lot of instances it was, you know, disallowed. And
23 so that's the way our traditions are based, you
24 know, with regard to how we treat our burials.

25 The rule — the 2010 rule on culturally

1 unidentified human remains is a serious concern,
2 especially where the rule separates the human
3 remains from the funerary objects and items, and
4 that rule has to be fixed. How it gets fixed is
5 amending it, reversing it, possibly repealing it,
6 whatever it takes, but it's a difficult thing to
7 have to deal with, as I just explained about our
8 burials and to see that, you know, there's a
9 separation that's going to occur with the funerary
10 items and objects with the actual individuals.

11 The technical amendment was another issue that
12 we brought up with regard to the definition of
13 Native American. This committee has, on occasion,
14 and the last time we did it was in October of 2009
15 where we reaffirmed our support for the amendment
16 to the definition of Native American. We call it
17 the 1776 law, or 1776 rule, after the decision in
18 the Kennewick case. So it's gone through three
19 sessions of Congress without success of being
20 enacted to amend the definition, and so I addressed
21 that issue.

22 And then the sacred sites, you know, we talked
23 about our burials. Sometimes it's discussed where
24 sacred sites are separated from burials and treated
25 on some different level. Well, in some cases,

1 that's allowable, but when it comes to our burials
2 and when it comes to sites of where our burials are
3 located, those are sacred sites. And so we're
4 looking for a right of action that tribes are going
5 to be allowed to bring court action to protect our
6 sacred sites, because right now we're the only
7 group of Americans in this country who do not have
8 a door to the courthouse to protect our sacred
9 sites.

10 And so we're just looking at it, you know,
11 from the standpoint of even looking at the First
12 Amendment, you know, freedom of speech, and we see
13 how those rights of American citizens are
14 protected. And we're having such difficulty with
15 our burials and protecting our burials and to
16 repatriate our burials. So along those lines I
17 think that I was trying to impress upon the Senate
18 committee to look at it in that regard, the
19 sacredness of having the freedom of speech or
20 having the freedom of religion to practice your
21 religion, the sacredness and the sanctity of that
22 tentative law has to be equal to what we're trying
23 to accomplish with the NAGPRA law.

24 And Sandra Murkowski, she raised a question –
25 Sandra Murkowski from Alaska raised a question with

1 regard to the status of corporations in Alaska,
2 Native corporations, and she spoke of it in the
3 context of the amendment of the definition of
4 Native American in the – you know, as part of the
5 law. And she brought it up during the second
6 panel, I believe it was in the second panel, the
7 Department of Interior representatives and the
8 National Museum of the American Indian
9 representatives were on that panel, and the
10 discussion was – I think, you know, being from
11 Alaska, I believe that Senator Murkowski's interest
12 is to see some level of acknowledgement of the
13 Federal government to Alaska Corporations that is
14 equal to tribal status.

15 And so in looking at the – you know, our
16 support for the technical amendment of the Native
17 American definition, what we're talking about with
18 regard to the technical amendment is to include the
19 two words "or was" after the two words "that is"
20 indigenous to the United States. So I'm not sure
21 yet how this is going to play out with regard to
22 Senator Murkowski's question and interest – and her
23 expression of her interest with respect to the
24 Alaska Corporation status in amending the
25 definition of either Native American or Indian

1 tribe. I'm not really certain yet how this is
2 going to work, but if the Senate Committee is
3 looking at the technical amendment with regard to
4 having something that they are going to be
5 agreeable to in moving forward and if these two
6 particular issues can complement one another, then
7 we'll probably see it go forward in that manner.

8 The record will remain open for two weeks from
9 June 16, and so Chairman Akaka stated that they are
10 interested in receiving testimony from interested
11 individuals with regard to the theme. And you
12 know, the three panels that were present were from
13 the Government Accountability Office, the GAO, they
14 discussed their two reports; and then the
15 Department of Interior and Smithsonian NMAI were on
16 the second panel; and then myself, Chairman Macarro
17 from Southern California, and Ted - I can't
18 remember his last name, he's - Isham, from
19 Oklahoma, the Osage Nation. We were the three
20 tribal leaders that were on the third panel.

21 And it's my hope, and I've already started
22 getting the word out to the number of tribal
23 leaders that I am acquainted with, to encourage
24 them to submit testimony or at least submit their
25 comments to the testimony by the deadline. And I

1 mean, that, I think, is what Chairman Akaka is
2 encouraging, you know, from having scheduled the
3 oversight hearing. So but that's about all I have
4 to say about the hearing.

5 ROSITA WORL: Thank you, Merv. Would you mind
6 if anybody wanted to ask questions?

7 MERVIN WRIGHT, JR.: No, I don't mind.

8 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

9 ROSITA WORL: Okay. Do we have any questions?
10 Thank you. I think in our last Report to Congress,
11 we have – the committee has addressed 10.11, in
12 terms of the associated funerary objects. We are
13 recommending, you know, that – first, we are asking
14 that museums be – you know, look at this for Native
15 Americans and our belief systems and return those
16 with the human remains, and then we're also
17 recommending that the rule be opened up again for
18 comment and revisiting that point. And then of
19 course, in our report, we've always consistently
20 had supporting the amendment "or was" and I think
21 we may have some opportunities, you know, to look
22 at that in legislation, so we'll continue to work
23 on that.

24 So okay, thank you. Thank you, Merv. We'll
25 go ahead now to the dispute procedures and finding

1 procedures, and I will turn it over to Eric
2 Hemenway now. Eric.

3 ERIC HEMENWAY: Thank you, Rosita.

4 **ACTION ITEM: REVIEW OF THE REVIEW COMMITTEE'S**
5 **DISPUTE PROCEDURES AND FINDINGS PROCEDURES**

6 ERIC HEMENWAY: Rosita, Sonya Atalay and myself
7 were given the duty of helping develop dispute
8 procedures, and it turned into a conversation of
9 dispute procedures during the meeting and then
10 dispute procedures prior to the meeting. And with
11 the dispute procedures prior to the meeting, we
12 have the procedures that would be on the website,
13 and that would be how the tribes and the museum or
14 Federal agency would come to a dispute. But we're
15 going to focus first on what would happen during a
16 meeting.

17 One of the issues that we talked about was
18 time, and the time issue of how long does each
19 group have to present. So we would like to see
20 some type of guideline with time, maybe 60 minutes
21 or 90 minutes. Once again, these are just all
22 recommendations to be discussed. But I think a
23 hard time limit would be beneficial for all groups,
24 so we have, you know, a fair amount of time
25 distributed. And with presenters, and we know that

1 we can't limit or restrict who is going to present
2 on behalf of each group but we would like to – they
3 can be one presenter or five presenters but just
4 let them know that the group, as a whole, has the
5 same amount of allotted time.

6 With preparation to a dispute, I think it's
7 important to pay notice that tribes sometimes have
8 unique special needs in some cases. In some cases,
9 when tribes present for a dispute, they are
10 bringing out sacred items or they do a certain
11 protocol before a dispute, so I think it's
12 important to have contact with a tribe prior to a
13 dispute to see if there's anything that is needed
14 to facilitate such a presentation. If there are
15 certain items that are needed when an item is
16 presented in public or if certain people are to
17 present, if they have special needs, so to speak,
18 because a lot of times these tribes are going above
19 and beyond by bringing sacred items. They're
20 bringing them out. And if we could accommodate
21 them to an extra level, I think that would be
22 conducive to the climate of a dispute, because many
23 times these disputes grow in tension, they're
24 antagonistic. So if we can help create an
25 atmosphere of openness at a dispute, I think it

1 would go a long way.

2 Another issue that was brought up was the
3 communication and try to limit the use of legalese
4 in some of these disputes and try to simplify the
5 language that is being used by both parties. And
6 if a group or both groups are going to use lawyers,
7 that there would be notice given to them to, you
8 know, try to use as plain language as possible,
9 because we've seen other disputes where it almost
10 turned into a court case where one lawyer got up
11 after one spoke and wanted to do a rebuttal and
12 wanted to go back and forth, and we were going over
13 our time. So I think that it would be productive
14 to have this guideline of plain language set forth
15 from the beginning.

16 Also, we were looking at with disputes just
17 try to have one per day, and if we have one – if we
18 have multiple disputes for a meeting, if we could
19 break them up just for one per day. And if there's
20 more than two disputes per meeting, if it would be
21 possible to try to schedule those, one of the
22 disputes at a later meeting for time constraints.
23 And when we're looking at creating an agenda for a
24 dispute, if – planning meetings not around a
25 dispute but if certain groups are planning for a

1 dispute that we try to set meetings up where
2 everybody can be in attendance. Because I don't
3 think having a teleconference for this type of
4 scenario would work very well. They require face-
5 to-face meetings.

6 And we were looking at trying to separate a
7 little bit broader the findings of fact and
8 disputes, because from a lot of perspectives from
9 tribes and museums, they get – it gets muddled if
10 the finding of fact is a dispute or if it's not a
11 dispute, but to have that separated just to a
12 greater degree for simplicity, so people understand
13 that the finding of fact is before the dispute;
14 that you have to have these in order before you
15 bring a dispute before the committee, just to ease
16 the process.

17 And when a dispute is presented that this is a
18 unique situation in NAGPRA, it involves a lot of
19 emotion. It involves a lot of charged energy, and
20 we just always try to be mindful of the parties
21 involved, the National NAGPRA Program, ourselves,
22 and the presenters of that unique climate that a
23 dispute brings, and that it's something that
24 doesn't happen often but when it does happen it has
25 to be given extra special attention and that these

1 people who come forth, some – a lot of these
2 disputes are the results of rejected repatriation
3 claims, so you have to keep that in mind, too, that
4 a lot of these disputes have been in the works for
5 many years and this is the accumulation of those
6 years of work.

7 So that's some of the procedures we discussed
8 via email about what goes on during a meeting, and
9 that we, you know, have a good idea of what happens
10 before a meeting, how a dispute is officially
11 brought before the Review Committee, and once
12 again, we would like to see just a little bit more
13 simplicity, and also if possible develop some type
14 of example, like ABC tribe/ABC museum are bringing
15 forth a dispute and show the steps of what is
16 needed to bring forth a dispute before the Review
17 Committee.

18 That is all I have for right now, but I would
19 welcome any comments from –

20 MERVIN WRIGHT, JR.: You know, the last – the
21 last set of disputes that we had in Washington, DC
22 in November, legal counsel kept rebutting and
23 wanting to address what was being said. And so I
24 think as I was chairing that meeting, I allowed
25 that to happen, whereas the other side didn't have

1 that equal opportunity or equal chance to do the
2 same. And so that's what we discussed here at the
3 committee that we've got to have some level of
4 control here where maybe it is just going to be one
5 presentation forward and then that's it, and then
6 let the information be brought forth to the
7 committee and then we review it and then make a
8 decision. I propose that would - something like
9 that might work, you know. That way at least it's
10 fair on that level of communicating the concern.

11 ERIC HEMENWAY: Another concern that came about
12 with rebuttal or a rebuttal situation was during
13 the public comment that kind of spilled over into
14 that. We had people coming up during public
15 comment and making comments about the previous
16 dispute from the day before, and there was groups
17 that weren't present who, you know, weren't able to
18 respond to that comment. So I agree with Mervin's
19 analysis of this, that it seemed like it veered to
20 the left a little bit too much. There was no
21 control about, you know, having this equality, a
22 sense of equality during the presentation so -
23 Rosita.

24 ROSITA WORL: Thank you, Mr. Chair. Well, just
25 one comment or a couple of comments. There are

1 times when you just can't achieve equality, if one
2 of the disputants decides not to attend the
3 meeting, so we do have those kind of situations.
4 But there was another situation that arose that I
5 think we need to address also and that is the issue
6 of conflict of interest. The Review Committee
7 members, you know, represent a certain kind of - I
8 mean, they have expertise, and there is no doubt
9 that you were probably appointed to the Review
10 Committee because of that expertise and/or because
11 you were also active in NAGPRA. And so we
12 recognize that the Review Committees have these
13 special expertise and knowledge, and it may be that
14 they do have a conflict of interest and should
15 recuse themselves. However, I think what we need
16 to do is to develop a process whereby, say, an
17 unanticipated event occurs, and right now we can't
18 - we don't know all of the cultural protocols of
19 all of the different tribes. And in the last
20 instance there was, you know, an issue with
21 cultural protocol, and so it appeared that the
22 conflict of interest was breached. However, I
23 think that if we should develop a process whereby
24 perhaps the - and this is maybe one of the
25 proposals, is that maybe the party with a conflict

1 of interest may call for or ask the DFO or ask the
2 Chair to call for a recess, thereby allowing time
3 for some discussion as to how to handle an issue
4 that – you know, an unanticipated issue.

5 And so that's my suggestion is that as we
6 continue our work, that we examine how we could
7 first deal with the conflict of interest but then
8 develop procedures that allow for some sort of
9 mechanism for a private discussion, not in front of
10 the Review Committee, so that perhaps another party
11 could be briefed on what needs to be said. So
12 that's my recommendation, Mr. Chair.

13 ALEXANDER BARKER: I just wanted to thank the
14 subcommittee for its work in developing these
15 recommendations. The material on the screen, I
16 believe, is from the 2006 procedures. And I just
17 wanted to clarify that these are not the procedures
18 that you had developed to this point; these are the
19 existing procedures and the subcommittee is working
20 on developing revisions and recommendations. Is
21 that correct?

22 ERIC HEMENWAY: Yes.

23 ALEXANDER BARKER: Thank you.

24 ROSITA WORL: Okay. I have another question.
25 In our Dispute Procedures, dated September 2006,

1 which I find to be the most simplistic ones, you
2 know, it's rewritten in another format, but it adds
3 in – I don't know, I just like this format. But in
4 this dispute procedures, in number G. 3., there is
5 a reference to "The DFO will publish the Review
6 Committee's findings and recommendations in the
7 Federal Register over the chair's signature, and
8 will send a copy of the published Federal Register
9 notice to all interested parties." That's what it
10 says in the Dispute Procedures. In the regulations
11 of – in our regulations, it makes it optional, they
12 could either send it – send their findings to the
13 disputing parties or it – could send it to the
14 Secretary, the Secretary of Interior, as to
15 whatever the proper resolution might be. So I
16 think we need to have clarity in that because my
17 understanding is that we have always sent our
18 findings to the Secretary. So I'm just asking for
19 maybe legal counsel to – or the program to comment
20 on that.

21 CARLA MATTIX: The current practice, based on
22 the dispute procedures, is that your
23 recommendations do go to the Secretary, but only as
24 a ministerial matter to be published in the Federal
25 Register. This is a discretionary function. It's

1 not required to be published in the Federal
2 Register, but they do go to the Department for that
3 publication. And so you're asking about the
4 provision in the regulation that says, "Making
5 recommendations to the disputing parties or to the
6 Secretary"?

7 ROSITA WORL: Yes.

8 CARLA MATTIX: I think what we have done in the
9 procedures is basically truncate that provision in
10 the regulation that says, "to the parties or to the
11 Secretary." By making it go through the Department
12 for publication, you're essentially doing both, but
13 the Secretary does not act on those
14 recommendations; the Department is merely taking
15 them for publication so that it can go out, not
16 only to the parties, but to the rest of the public
17 as well.

18 ROSITA WORL: Okay. I mean, that's clear to me
19 but I guess it's not as it's written in our
20 procedures, in the dispute procedures that the
21 committee adopted, not the regulations.

22 CARLA MATTIX: Right.

23 ROSITA WORL: So we need to look at that later.
24 So do we have further recommendations? I'm
25 assuming, Mr. Chair, that we're going to continue

1 to work on these and ask for further input on it?

2 ERIC HEMENWAY: Yeah, I think this is an
3 ongoing task, and I'm glad you brought up the issue
4 of recommendations. Possibly having other museums
5 and tribes who have gone through a dispute submit
6 some type of recommendation or type of notes or any
7 type of advice to us or the National NAGPRA Program
8 to get their insight on somebody who has actually
9 gone through a dispute from beginning to end. I
10 think that would provide a lot of insight to
11 everybody about what worked, what didn't work, what
12 could be improved, and I always like to look for
13 proven examples and I think it would be a great
14 idea to have, you know, tribes and museums or
15 Federal agencies, for that matter, submit some type
16 of comment to the Review Committee on their
17 experiences with disputes. And I would like to
18 think that I'm speaking on behalf of the committee
19 that we want to have a process that would – that
20 disputes are the last option, and that we're
21 looking at framing something that is workable for
22 everybody, but ultimately we don't want disputes to
23 come before us. We want tribes and museums and
24 Federal agencies to try to work this out beforehand
25 and before it gets to this level. And maybe just

1 having, you know, this possibility of a dispute
2 being brought before a tribe and a museum that is
3 the catalyst for them to, you know, open up real,
4 meaningful consultation and real communication, and
5 then we won't even know about it. You know, it
6 would just be resolved. So that's, I believe, one
7 of our ultimate goals, but having that correct
8 information available to the public, I think, is
9 critical. Thank you.

10 MERVIN WRIGHT, JR.: Eric, yes, I think that's
11 a good idea. I think when we – when we've been
12 involved with 9th Circuit Court proceedings or
13 circuit court proceedings, there's always that, you
14 know, the settlement option before it goes to
15 litigation. So I mean, some formality like that,
16 and I know, Steve, later on we're going to talk
17 about the consultation and somehow maybe the
18 dispute procedures, along with the agency's
19 consultation policy can take into account what Eric
20 just described.

21 ROSITA WORL: Mr. Chair, in thinking about your
22 comments about, you know, that we would – you know,
23 it really would be better if the museum, agency and
24 tribes could work out something before, in looking
25 – in looking at our record of our disputes and the

1 status, you know, it doesn't look like we have an
2 overwhelming success. And I think from my
3 perception, there seems to be some
4 misunderstandings about, you know, what can we
5 accomplish, you know, what can we do in the
6 procedures? And maybe - I know that we've compiled
7 all of the information on the past disputes, but
8 maybe right now what we need to do is also - and
9 this part of the comments that were made this
10 morning about giving the Review Committee more
11 authority is maybe what we need to do right now is
12 to do that further analysis of the disputes, the
13 past disputes, what's happened, and then take a
14 look at the findings. And then I think it's also
15 important, you know, that we bring this information
16 out to both museums, tribes and agencies, so they
17 can look at the total experience of what have we
18 learned from that before - you know, are there
19 procedural administrative steps that we could take.
20 It might point to that before we might want to move
21 to a legislative change.

22 So Mr. Chair, I guess my recommendation is
23 that maybe if - if our program could begin to look
24 at, you know, the disputes and analyze them as to,
25 you know, what has happened to them? What can -

1 what could we have done better at the dispute level
2 process that might have helped accommodate. We
3 have had some successes where museums and tribes
4 have – you know, where they're almost ready to come
5 to a dispute. We know that, but there have been
6 some discussions, you know, at that level, and they
7 seemed to have resolved it. And maybe those are –
8 you know, those things never get on the table. But
9 maybe, you know, from experience or what we would
10 call, we might be able to look at that and just see
11 if there are any answers in there. So that would
12 be aside from continuing to work on the dispute
13 procedures. But I would recommend that we do that
14 kind of analysis.

15 CARLA MATTIX: There might have been some
16 confusion in the reference to the Sally Butts
17 reports that Sherry mentioned earlier. Those are
18 those reports that you had with that exact
19 information that you had requested from prior
20 meetings.

21 ROSITA WORL: Yes, I know.

22 CARLA MATTIX: So those are basically done.
23 The only thing left is that Stephen and I need to
24 review those reports. And so hopefully we will be
25 able to do that soon, and then you will have that

1 information.

2 ROSITA WORL: I'm talking - I do appreciate the
3 status report.

4 CARLA MATTIX: I just - for those who might not
5 know about that.

6 ROSITA WORL: Those are - that was very good,
7 and those are the things I wanted to continue to
8 report in Sherry's report. But I think if we went
9 back into them and looked, you know, looked more
10 thoroughly to see, you know, can we find any kind
11 of answers there before we move on, you know, to
12 the next level. That was my suggestion. I know
13 Sherry wants more work.

14 SHERRY HUTT: Well, Madam Chair, in terms of a
15 process here, once that report is clear, we will
16 provide it to you. We will also put it up on the
17 website. If your committee is doing work in the
18 interim before the next meeting and you have a
19 committee report for the next Review Committee
20 meeting, obviously that would become materials for
21 the next Review Committee, as well. So we
22 understand it's a work in progress.

23 ROSITA WORL: But what I hear from our
24 subcommittee chair is that we are seeking further
25 input into the dispute procedures from parties who

1 were involved in the disputes, and then we
2 certainly want to invite others to comment on it,
3 you know, either in public comment or in direct
4 communication to the Review Committee. But we
5 also, I don't know if it's possible to do a webinar
6 on this, where you have kind of an open discussion
7 on disputes.

8 SHERRY HUTT: I can tell you, Madam Chair, that
9 part of what Ms. Butts did was to contact the
10 disputants to find out what – the current status,
11 after the fact. So you will get additional
12 information that you didn't have. Once you all get
13 that report, if there's something that you have as
14 a suggestion, as a webinar or more information,
15 certainly you could forward that to the DFO, and
16 that way we could continue to work on whatever
17 additional pieces that you would need to support
18 your efforts.

19 ROSITA WORL: Does that conclude your report?

20 ERIC HEMENWAY: Yes, it does.

21 ROSITA WORL: Okay. So my understanding now is
22 we have – the committee has made a number of
23 recommendations, but we have not formalized or
24 adopted them because we are going to be seeking
25 further comment from parties who were involved in

1 disputes and also from the public, either in public
2 comment period or in written communication to the
3 Review Committee. And so we'll continue to work on
4 this.

5 Are there any comments or questions on that
6 process or on the dispute process and the work
7 we've outlined for ourselves? We're all – that's
8 the way to go?

9 Okay. We'll continue to work on it. And
10 thank you, Eric, and Sonya I know did a lot of work
11 also.

12 ERIC HEMENWAY: Yes, she did.

13 ROSITA WORL: Convey our thanks to her as well.

14 So the next agenda item we had was the – it
15 says, "Discussion: Review Committee questions to
16 the National NAGPRA Program concerning NAGPRA
17 Grants," and I think I had raised that agenda item.
18 And I notified NAGPRA Program that, as far as I'm
19 concerned, my questions have been answered, but I
20 didn't know if Review Committee members had any
21 further questions on the grants.

22 If not, let us move on to our status report on
23 the Department of Interior policy on consultation
24 with Indian tribes, and we will turn it over to
25 Stephen Simpson and also Mervin Wright, who I guess

1 serves on the national consultation committee. So
2 Stephen.

3 **REPORT: STATUS REPORT ON THE DEPARTMENT OF INTERIOR**
4 **POLICY ON CONSULTATION WITH INDIAN TRIBES**

5 STEPHEN SIMPSON: Thank you, Madam Chair. The
6 Department's policy – the Department is working on
7 its policy, its new policy for consultation. This
8 is prompted by the President's memo of – memorandum
9 of November 5, 2009, that directed every Federal
10 agency to come up with a plan of action to
11 implement the Executive Order 13175 on
12 consultation, government-to-government
13 consultation. As a result of that, the Department
14 convened a joint tribal/Federal group to develop
15 that policy. That's the group upon which
16 Mr. Wright serves. In January of this year, the
17 Department issued a draft policy for a 60-day
18 tribal comment period. We received 22 comments.
19 Those are all listed on the – linked on the
20 Interior website under consultation, under the
21 consultation policy. So you can actually look at
22 all of the comments we received. They were from 22
23 tribes, and I think there were about 300 comments.

24 The Department and the Federal and tribal
25 group worked on any changes to the policy, and in

1 November – in April, rather, sent a letter to the
2 tribal leaders reporting on consultation. This is
3 – basically what we're doing is consultation on
4 consultation and trying to model a best practice, I
5 think, while we're doing it.

6 The April letter to the tribal leaders
7 reported on the consultation, including a list of
8 the issues that were brought up, with a plan for
9 the public review of the proposed policy. That
10 public review was also begun. On May 17, the
11 Department proposed its policy in the Federal
12 Register for public review. Both the tribal leader
13 letter and the proposed policy are in your
14 materials for this meeting. The comments on that
15 proposed policy are due on July 18 of this year, so
16 the committee still has time to go if you want to
17 come up with comments or anyone else wants to
18 comment on that proposed policy, feel free to do
19 so, please.

20 Basically the policy is for – is for the
21 Department working with the various bureaus in the
22 Department – Reclamation, Bureau of Land
23 Management, Bureau of Indian Affairs, the Office of
24 Surface Mining – to consult on any Departmental
25 actions with tribal implications, and there's a

1 definition of that term, "Departmental actions with
2 tribal implications," in the policy itself. It
3 refers to "Any Departmental regulation, rulemaking,
4 policy, guidance, legislative proposal, grant
5 funding formula changes, or operational activity
6 that may have a substantial direct effect on an
7 Indian Tribe," and then there are some examples of
8 that. It does not include anything in litigation
9 or settlement negotiations or anything that we're
10 doing as a result of an administrative or judicial
11 order.

12 So the policy is to figure out how to consult
13 on those actions. There is — there are procedures
14 built into the policy for keeping it current and
15 for continuous feedback, including an annual
16 meeting between the Secretary and tribal leaders
17 and regular meetings with tribal leaders and
18 bureaus to gather input. The consultation will be
19 coordinated at the Departmental level by a new
20 position, a Tribal Governance Officer, is what it's
21 called. And there is also guidance in the policy
22 for options for bureaus on how they're going to
23 carry out consultation, in particular situations.
24 So I commend to the committee and to anyone else
25 the Federal Register notice from May 17, 2011, on

1 proposing the policy and encourage anyone and
2 everyone to make comments on that notice.

3 Mervin, anything else?

4 MERVIN WRIGHT, JR.: Yeah, just we had four
5 face-to-face meetings on the tribal consultation
6 team, and we're still -- we still schedule
7 teleconferences, get updates on where we're at. We
8 did -- our last meeting was held up in Suquamish,
9 Washington, at the end of May, where we did take
10 into account all of the comments. We addressed all
11 the comments, and then soon after this latest
12 version was published. And one of the issues we
13 had a quite lengthy discussion over and, in my
14 opinion, leaves that door open for interpretation
15 was under the definitions, Departmental action with
16 tribal implications. It reads, and this is how
17 it's published, "Any Departmental regulation,
18 rulemaking, policy, guidance, legislative proposal,
19 grant funding formula changes, or operational
20 activity that may have a substantial direct effect
21 on an Indian Tribe, including but not limited to:"
22 and it lists some of the issues there. But the
23 terms "may have a substantial direct effect," you
24 know, that's really somebody else's call. So what
25 that means from one agency to the next, that was

1 why we had such lengthy discussion.

2 And there are Federal representatives from the
3 Bureau of Reclamation, Fish and Wildlife Service,
4 the Bureau of Indian Affairs, the Bureau of Land
5 Management, and the Park Service is involved.
6 They're all – and then plus there's, I think, 24
7 tribal representatives, so it makes quite a room
8 full of interested people when we're trying to have
9 this discussion. And it is the anticipation of the
10 consultation team that the policy will be completed
11 by September, and that we're hoping that we're
12 going to have a signing ceremony – at least at this
13 time, the discussions, the early anticipated
14 discussions are that it will occur in Washington,
15 to have a signing ceremony of the Secretary.

16 So we're going through this process and it has
17 been a lot of work, especially in receiving the
18 comments and our co-chairs have been extremely
19 busy. And we have a couple of subcommittees there,
20 too, that have been working on the details of
21 addressing the comments. And so, you know, coming
22 into it, the interest of the tribes are to make
23 sure that when we are engaged in consultation that
24 we – you know, our comments are not just going to
25 be considered and then a decision is made later on

1 without us – without our involvement. That is how
2 it usually works, and so we're trying to change
3 that with this policy. And it's likely that each
4 of the agencies – some of the agencies have
5 policies already, consultation policies. The Fish
6 and Wildlife Service, I know has one. The Bureau
7 of Land Management has one.

8 And so – but Mr. Simpson is right, you know,
9 it's part of the transparency policy and the two
10 years that President Obama has engaged with tribal
11 leadership, improving communication is the
12 objective here. And he – the President – excuse
13 me, the President has heard loud and clear from the
14 tribal leadership that communication has been an
15 area that hasn't been effective, and so the
16 consultation policy is the start – we're hoping is
17 the start of some good things. So that's all I
18 have.

19 STEPHEN SIMPSON: And I would note that the –
20 under – Mervin correctly characterized the
21 definition of "Departmental action with tribal
22 implications." I would note that we said that
23 there were three examples here. The first one of
24 those is – of the substantial direct effects may be
25 on "Tribal cultural practices, lands, resources, or

1 access to traditional areas of cultural or
2 religious importance on Federally managed lands,"
3 in other words, some of the sacred sites
4 information, and that sort of thing, that we were
5 talking about earlier.

6 ROSITA WORL: Okay. Are you done?

7 STEPHEN SIMPSON: Yes, thank you, Madam Chair.

8 ROSITA WORL: Do we have any questions or
9 comments? I don't know if we're supposed to be
10 commenting on these proposed regs or if it's just
11 an informative progress report. I guess we do have
12 until July 18 to comment on the regs.

13 MERVIN WRIGHT, JR.: Yeah, the — as Stephen had
14 reported, the — it is now open for public comment,
15 so you know, what they did prior to that was
16 solicited tribal comment. And so what we're
17 looking at here is a compilation of all of the
18 comments from the tribes and input from the Federal
19 agencies and the Federal representatives around the
20 table in addressing those comments.

21 ROSITA WORL: Thank you. I just might also
22 report, as I indicated this morning, that the
23 Alaska Native corporations have a legislative
24 requirement for consultation. And from what I
25 understand, the Secretary had — was — I don't know

1 if it was the Secretary or Assistant Secretary, was
2 moving on a bifurcated approach to the consultation
3 process, but Larry Echo Hawk did announce at NCAI
4 that he was beginning the process. There has been
5 a committee appointed, and it's causing a lot of
6 excitement and discussion at home because our
7 institutional development has been somewhat
8 different than the tribes in the Lower 48; you
9 know, we took our settlement of our aboriginal
10 title through corporations rather than through
11 tribes. And so we're - in the last 40 years, we've
12 been learning about some of the unintended
13 consequences of our actions. So it's an evolving
14 process for us in Alaska. But that consultation
15 process is going to begin with the appointment of
16 all of the individuals to begin to work with
17 Secretary - Assistant Secretary Echo Hawk.

18 MERVIN WRIGHT, JR.: That was - you know,
19 speaking of the Alaska corporations, that was an
20 area that was brought up, and I also serve on the
21 Tribal/Interior Budget Council, and I did confer
22 with the two Alaska reps, Loretta Bullard and
23 Gloria O'Neill, on the issue of consulting with
24 Alaska corporations, and I know that we're dealing
25 with that same issue here. So you know, it's just

1 – as you were saying, Madam Chair, it's not only an
2 exciting time for the Alaska Native Villages and
3 the individuals up there, but it's also, I think,
4 an important time to make sure that how these
5 policies and technical amendments and different
6 undertakings are completed, are done with caution,
7 as well as like the delicate consideration of the
8 legal implication of what it's going to mean in the
9 long run.

10 ROSITA WORL: So Alaska is inviting all of you
11 to come to Alaska and learn about us.

12 So let's see. Where are we on the agenda?

13 DAVID TARLER: Madam Chair, on the agenda, we
14 are for today on the last item, which is public
15 comment, but we have a considerable amount of time
16 this afternoon, and I'm wondering if we might take
17 a look at some of those agenda items for tomorrow
18 and maybe address those today.

19 ROSITA WORL: I think that's a very good idea.
20 Let's take a look at – let's recess just for five
21 minutes and let's take a look at that. Could we
22 confer on that?

23 DAVID TARLER: Yes, and if you would stay in
24 place, I have something for you all to sign. Thank
25 you.

1 ROSITA WORL: Okay. Well, we'll just take a
2 few minute recess while we look at the agenda, and
3 see what we could work on today.

4 **BREAK**

5 ROSITA WORL: Shall we – we'll go ahead and
6 call the Review Committee meeting back into order.
7 And what we have decided is that we would take up
8 the issues – agenda items that require work on the
9 part of the Review Committee, so that if there are
10 other people who intended to come to the meeting
11 tomorrow, they would still have that opportunity.
12 We'll address those other agenda items tomorrow.

13 **ACTION ITEM: APPOINTMENT OF THE SUBCOMMITTEE TO**
14 **DRAFT THE REVIEW COMMITTEE'S ANNUAL REPORT TO**
15 **CONGRESS FOR 2011**

16 ROSITA WORL: So the first action item is
17 appointment of the subcommittee to draft the Review
18 Committee's annual Report to Congress for 2011, and
19 the Chair will appoint Merv Wright and Alex Barker.
20 So they have their work cut out for them.

21 SHERRY HUTT: Madam Chair, if I might on behalf
22 of the program, would we be safe in saying that
23 that will be an agenda item at the November meeting
24 and that we could look to have that report voted on
25 at the November meeting?

1 ROSITA WORL: I know that they are fast
2 workers, and I'm sure we will have it for our
3 November meeting.

4 **ACTION ITEM: SELECTION OF DATES AND LOCATIONS FOR**
5 **THE SPRING 2012 AND FALL 2012 REVIEW COMMITTEE**
6 **MEETINGS**

7 ROSITA WORL: Our next agenda item is the
8 selection of the dates and locations for the spring
9 of 2012 and also for the fall of 2012. And what
10 the committee generally does is we look at – we
11 divide up the states into the four different
12 regions: Northwest, Southwest, Northeast, Southeast
13 – and then we also include Alaska and Hawaii, kind
14 of on their own as in a separate category. And so
15 in looking at – the national program always
16 provides us a list of the meeting places we've had,
17 and based on their report, we see that we've met in
18 Sarasota in the Southeast, Washington, DC in the
19 East, Syracuse, Northeast, and Reno, Nevada, we
20 classify as Northwest. So based on that, what's
21 the wish of the committee for having meetings? And
22 then I also might note that in 2006 we met in
23 Juneau, so that would be kind of in comparing that
24 to Hawaii, the next meeting place between the two
25 of them would be Hawaii.

1 So what is the wish of the committee? Do we
2 have a recommendation for the Spring of 2012?

3 ADRIAN JOHN: Yes, we were – in discussion, we
4 were recommending to go to Santa Fe in the spring
5 of 2012.

6 ROSITA WORL: Okay. Is that a motion?

7 **REVIEW COMMITTEE MOTION**

8 ADRIAN JOHN: That is a motion.

9 ROSITA WORL: Do we have a second to that
10 motion?

11 LINDALEE FARM: I'll second it.

12 ROSITA WORL: Okay. Any discussion?

13 All those in favor of Santa Fe for 2012,
14 signify by saying aye.

15 ALEXANDER BARKER: Aye.

16 LINDALEE FARM: Aye.

17 ERIC HEMENWAY: Aye.

18 ADRIAN JOHN: Aye.

19 ROSITA WORL: Aye.

20 MERVIN WRIGHT, JR.: Aye.

21 ROSITA WORL: Those opposed, say no. That
22 motion is adopted. Our spring 2012 meeting will be
23 in Santa Fe, and we will want to get that out on
24 the Federal Register as soon as we can, so that
25 people from the Southwest can begin preparing if

1 there are any issues, you know, that they would
2 like to bring at that time. I mean, they're
3 welcome to come sooner than that, but some may -

4 SHERRY HUTT: What we do is we - just so the
5 panel all know how this works, is you give us your
6 recommendations as to where you would like to go,
7 and as the Chair said, you are very ecumenical in
8 terms of traversing the country so that you reach
9 out. And then what we do is we take the places
10 you've identified and we look for workable,
11 affordable spots, both for lodging and meetings and
12 transportation and all, to accommodate your
13 suggestions. And then when we actually have a
14 place, we actually have a venue, then we put out
15 the Federal Register notice.

16 We are to - by the rules, we are supposed to
17 put out a Federal Register notice like 30 days in
18 advance. That's not workable in terms of how we
19 prepare. So what we do is we want them out more
20 than six months in advance. And for instance, for
21 this meeting, we put out the notice for both this
22 meeting and the fall meeting in November in Reno;
23 those notices have both gone out. So being in
24 advance is a good thing.

25 There are other meetings that are occurring,

1 and if you note I sent you all – or the DFO sent
2 you all a message on May 25, and also gave you, and
3 I can refresh and give you those dates, gave you
4 some suggested dates to look at as well. And so
5 you know how we arrived at those dates, we looked –
6 we went online and we looked at meetings of SAA,
7 AAM, triple A [AAA], NATHPO, NCAI, USET, AIA and
8 WAC, and we looked at the meetings that they had
9 indicated so that we wouldn't conflict in dates.
10 So that's how we came up with spring dates, May 9
11 and 10 or 16/17 for your May meeting. So if you
12 might, if those dates work for you consider one or
13 either of those dates to give us some parameters in
14 which to work, because when we're looking for
15 venues, we also have to look at the dates the
16 venues are available. But in addition to the map
17 that Lesa puts together that shows you where you
18 met and when in the past, we also like to look and
19 make sure we're not conflicting with other major
20 meetings that would – so many of you are active in
21 those organizations.

22 ROSITA WORL: Okay. So you want us to look at
23 our calendar?

24 SHERRY HUTT: If you could, for May 9/10 and
25 16/17 and see if either of those dates work well

1 for you.

2 MERVIN WRIGHT, JR.: Madam Chair, May 9 and 10
3 is the Wednesday and Thursday, second week in May,
4 and then 16 and 17 is the third week in May,
5 Wednesday and Thursday.

6 SHERRY HUTT: And then if I might, the reason
7 we suggested Wednesday/Thursday is what we would do
8 is have an all-day training on Tuesday. So that
9 gives you Monday and Friday as travel days. For
10 NAGPRA staff, we'll travel any day of the week to
11 accommodate you, but for so many people who come
12 and attend, they really are on that Monday-Friday
13 schedule. So we tried to do that as much as we
14 can, accommodate your attendees.

15 ROSITA WORL: So May 9/10 or May 16/17, does
16 anyone have problems with any of those dates?

17 So it looks like we're open right now if we
18 can move, you know, quickly, as quickly as we are
19 able so we could tie those dates down, one of those
20 dates.

21 SHERRY HUTT: We will get to work on looking
22 for a suitable venue to meet that, as soon as we
23 return back to the office and start to firm these
24 up. We appreciate that you look in advance. It
25 makes it best for everybody in terms of planning.

1 And then if you might, do you have any thoughts for
2 fall?

3 ROSITA WORL: Okay. Let's take a look at fall,
4 fall 2012, and we would be generally looking at
5 November?

6 SHERRY HUTT: The dates that we came up with by
7 looking at all the meetings, and some of these
8 organizations do plan that far in advance, so we
9 looked at their meetings so as not to conflict.
10 And we came up with October 24 and 25 and November
11 28 and 29 as times that do not conflict with public
12 holidays or meetings of major organizations, of
13 which you all may be involved.

14 ROSITA WORL: October won't work for me. I
15 have AFN meetings during that week.

16 SHERRY HUTT: You have AFN in October?

17 ROSITA WORL: Yes.

18 SHERRY HUTT: So the October 24/25, are you
19 that late in October? Okay. And then the other
20 dates were like November 28/29. I think that's the
21 week after Thanksgiving. If you look at a venue
22 that late in November, hopefully it would be a warm
23 place.

24 ROSITA WORL: November 28/29. November 28/29,
25 okay? Okay? Let's shoot for that. November

1 28/29. Okay. Now, insofar as the location does
2 the committee have any recommendations?

3 LINDALEE FARM: Well, Hawaii is a warm place.

4 SHERRY HUTT: And I should caveat all of these
5 discussions in that we never know what the Federal
6 budget would be and that when we do meet in DC it's
7 about half the cost of when we don't meet in DC.
8 And we know that you would rather meet in DC than
9 have a telephonic conversation – you know, a
10 telephonic meeting. So we appreciate the choice of
11 venue that you all look at because you're looking
12 at serving the constituents around the country, and
13 to the extent we can accommodate that we will.
14 Budgets are what we get when we get them.

15 ROSITA WORL: Great. Yes, we took that into
16 consideration. We understand, you know, the budget
17 cycle and budget issues that we're all facing. But
18 the other issue that we also thought about, it's
19 been some – you know, we were in Hawaii in 2005, so
20 we're due for a visit sometime. And – but the
21 other one, it's because we're working on the
22 dispute process and in the past, you know, we
23 thought about are there ways that we could assist
24 Hawaii, which has a very different system. They
25 don't have tribes, and they do have organizations,

1 and that issue has become problematic. And we've
2 tried to think about how we could be able to help
3 Hawaii, you know, in the dispute process, so that
4 was one of our thinking as well, as one of the
5 reasons why we should be there. But with that
6 caveat in mind, we will go – we will have Hawaii,
7 but it's contingent, of course, on our budget
8 situation.

9 Okay. Great. Thank you, guys.

10 SHERRY HUTT: Thank you all. I appreciate
11 that.

12 ROSITA WORL: Now, we're ready for Diana, is
13 she here? Oh, where is she? We're ready for
14 public comment by Harvard University Peabody
15 Museum.

16 **PRESENTATION: UPDATE BY THE PEABODY MUSEUM, HARVARD**
17 **UNIVERSITY ON NAGPRA IMPLEMENTATION GENERALLY AND**
18 **IMPLEMENTATION OF THE RULE ON CULTURALLY**
19 **UNIDENTIFIABLE HUMAN REMAINS (43 C.F.R. 10.11) IN**
20 **PARTICULAR**
21 **DIANA LOREN**

22 DIANA LOREN: Thank you to the Chair and
23 members of the committee for giving us the
24 opportunity to speak on our update on repatriation
25 at the Peabody Museum at Harvard. Trish says hello

1 to everyone. She's at a meeting back at home with
2 Pueblo of Jemez. We're having a consultation visit
3 while we're out.

4 So the Peabody Museum has committed
5 significant resources, expertise and attention over
6 many years in a good faith effort to implement
7 NAGPRA and to cultivate the respectful
8 relationships necessary to this effort. The museum
9 has partnered with Native American communities and
10 other institutions across the United States to work
11 toward successful achieving mutual goals of
12 education and research. Our museum considers the
13 experience to be a privilege. The process has
14 benefited each of our missions of education,
15 research and developing relationships with
16 indigenous communities and scholars. This summer
17 and fall, the museum will again partner with the
18 Harvard University Native American Program and
19 local Native American communities to continue our
20 excavations and research on the Harvard Indian
21 College of 1655 and the History of Native American
22 education at Harvard. We are pleased to announce
23 that in May of this year Joel Iacoomes, a member of
24 the Wampanoag Tribe and a member of the class of
25 1665 received his posthumous degree from Harvard

1 University during commencement ceremonies. Joel
2 Iacoomes's degree was received by Tiffany Smalley,
3 who became the first Wampanoag to graduate from the
4 college in 346 years.

5 The Peabody Museum is responsible for NAGPRA
6 implementation for one of the largest and broadest
7 collections subject to the Act and to the newest
8 rule for Section 10.11. We consult on human
9 remains and funerary objects from nearly every
10 state. Our museum has – already has completed
11 requirements to enable repatriation of
12 approximately 3,100 individual human remains and
13 over 10,000 funerary objects. This represents
14 approximately 13 percent of the total number of
15 human remains and funerary objects that are
16 available for repatriation nationally. Of
17 culturally affiliated collections, physical
18 repatriation has been completed for over 2,900
19 individual human remains, 3,900 funerary objects, 1
20 sacred object, 73 objects of cultural patrimony, 18
21 objects that constitute both sacred object and
22 object of cultural patrimony.

23 During FY 2011, the museum hosted three NAGPRA
24 consultation visits with representatives from the
25 Apache Working Group, Bear River Band, and Saginaw

1 Chippewa Indian Tribe. Two physical repatriation
2 events took place in FY 2011. These include the
3 following: funerary objects and human remains to
4 Saginaw Chippewa and human remains to the Tunica
5 Biloxi Tribe. Three new Federal Register notices
6 were published in FY 2011, which enabled the
7 repatriation of three individual human remains and
8 seven unassociated funerary objects.

9 Nationally, the Peabody Museum has engaged
10 with the regulatory development process for the
11 disposition of culturally unidentifiable human
12 remains, and this draft rule continues to be of
13 significant concern regarding the resources it will
14 require to implement at the university level. At
15 the Peabody, this section impacts nearly 7,000
16 individual human remains from most states. It
17 impacts the museum's ability to work towards mutual
18 goals of education and research and requires
19 significant time to implement. For these reasons,
20 the museum appreciates the opportunity to
21 contribute to the ongoing dialogue about NAGPRA's
22 implementing rules and is submitting a comment for
23 the July 1st deadline. These comments will detail
24 Harvard's concerns regarding the scope of the rule,
25 consultation, the disposition process outlined, and

1 the potential impact of imposed deadlines to the
2 process.

3 The museum appreciates this opportunity to
4 update the committee on our recent NAGPRA efforts.
5 At the Peabody Museum we have been pleased with our
6 record on NAGPRA and are grateful for the strong
7 relationships we have developed that have benefited
8 the institution so broadly. Thank you for your
9 time.

10 ROSITA WORL: Thank you very much. I know that
11 the Review Committee shares our gratitude that the
12 Harvard Peabody Museum is here for every meeting,
13 and we truly appreciate, you know, the updates that
14 you provide. Very helpful to us. And I'm
15 wondering if any of our committee members have any
16 comments.

17 MERVIN WRIGHT, JR.: Is it possible for us to
18 get a copy of your presentation?

19 DIANA LOREN: Absolutely.

20 MERVIN WRIGHT, JR.: Thank you.

21 ROSITA WORL: Thank you.

22 DIANA LOREN: Thank you.

23 ROSITA WORL: Okay. Now I guess we could
24 invite any other public comments, if you have any
25 other – we have time for any further public

1 comments that you might have.

2 DAVID TARLER: We had a request from the
3 National Park Service by Margo Schwadron to make a
4 public comment, if she is present. I call on Margo
5 Schwadron.

6 ROSITA WORL: Thank you, and welcome.

7 **PUBLIC COMMENT**

8 **MARGO SCHWADRON**

9 MARGO SCHWADRON: Thank you very much, and good
10 afternoon. First and foremost, I would like to
11 thank the Review Committee for granting us some
12 time to speak today. On behalf of the National
13 Park Service's Park NAGPRA Program, and in
14 partnership with the Choctaw Nation of Oklahoma, we
15 wanted to share a brief overview of a recent
16 successful repatriation that occurred within our
17 Southeast Region. My name is Margo Schwadron,
18 Archeologist and NAGPRA Coordinator for the
19 National Park Service's Southeast Region.

20 On March 22, 2011, we completed the largest
21 repatriation in the National Park Service's
22 Southeast Region's history, and it was the largest
23 so far for any of the southeastern tribes. A total
24 of 124 individuals, and numerous associated
25 funerary objects, were brought home and reburied in

1 their original resting places on Natchez Trace
2 Parkway's property.

3 This effort was initiated in 2009 with
4 numerous tribal consultations. The Choctaw Nation
5 of Oklahoma took the lead in submitting a claim to
6 the NPS, but requested that other potentially
7 affiliated southeastern tribes be welcomed to
8 participate in the repatriation process. Because
9 the consultation process was viewed as an ongoing
10 open dialogue between the tribes and the NPS
11 throughout the two years it took to complete the
12 repatriation, we were able to respect and
13 incorporate the wishes and requests of the tribes
14 in all stages of the repatriation process. This
15 repatriation stands as a very successful example of
16 how well tribes and the NPS can partner and work
17 together to bring Native American ancestors back
18 home in the most respectful manner, as well as
19 using new techniques to enhance the accuracy of the
20 reburial process.

21 One of the new techniques employed during this
22 repatriation was the use of state of the art
23 geophysical technology, including ground
24 penetrating radar, 3D LiDar scanning, gradiometer,
25 and base station survey grade GPS, to relocate the

1 original trenches from the 1950s and 1960s
2 excavations. We were able to rectify the original
3 burial locations, open up reburial graves within
4 the footprint of the original excavations, and
5 place burials and their objects within exact
6 original orientations.

7 A significant coalition of southeastern tribes
8 attended the reburial ceremony, including tribal
9 Elders, Chiefs, THPOs and members of five federally
10 recognized tribes, including: the Choctaw Nation of
11 Oklahoma, Jena Band of Choctaw, Choctaw Band of
12 Mississippi, Muscogee (Creek) Nation, and
13 Chitimacha Tribe of Louisiana. The tribes led the
14 repatriation with ceremony and preparation of
15 medicine, and directed the entire reburial process.
16 NPS archeologists worked side by side with the
17 tribes to make reburial placements as close to
18 original placements and orientations as possible.
19 Tribal families and members of Tribal Historic
20 Preservation divisions helped significantly in
21 numerous ways by setting up, hauling equipment,
22 excavating the reburial pits, pouring concrete, and
23 backfilling when completed.

24 Tribal Elders and Chiefs from all of the
25 tribes spoke, thanked the NPS and our team for

1 making this happen, and asked that we continue to
2 work with them and all of the tribes to continue
3 important work such as this. The tribes were
4 especially appreciative of the new technology that
5 we used to make the reburial placements as accurate
6 as possible, and asked us to work with them in the
7 future to teach them this process so they could
8 employ these methods for their tribal work.

9 Through this process, the NPS addressed other
10 requests that the tribes expressed. This included
11 removing very outdated and offensive NPS signage
12 that had actually marked burial locations, the
13 removal of a sidewalk that had traversed the top of
14 the mound site, disallowing the public to walk on
15 top of the mound, and revegetation of the mound
16 site with planting native wild grass. Through
17 consultation, the NPS learned that the site is now
18 considered a sacred site, and it would be protected
19 from any further disturbance.

20 The success of this repatriation was due in
21 large part to a great and important network of NPS
22 NAGPRA professionals and programs, including the
23 National NAGPRA, Park NAGPRA, and Southeast
24 Regional NAGPRA programs. Support from NPS Park
25 NAGPRA included internal project funding, a NAGPRA

1 intern grant, and training. Support from National
2 NAGPRA included a National NAGPRA grant to the
3 Choctaw Nation of Oklahoma for the repatriation.
4 We thank all of you for your support in making
5 repatriations like this possible. Thank you.

6 ROSITA WORL: Thank you very much. Do we have
7 any questions?

8 I think it's a wonderful model, a great model,
9 and it sounds like you handle a lot more issues
10 besides repatriations, some very sensitive issues.
11 And I think it's an exemplary model, you know, that
12 we might want to ask if we could put that up on our
13 website.

14 MARGO SCHWADRON: Thank you very much.
15 Certainly, we will continue to work with the tribes
16 to make sure that any information that we make
17 public is vetted through them. We certainly don't
18 want to compromise any —

19 ROSITA WORL: Well, once you confer with the
20 tribe, let us know.

21 MARGO SCHWADRON: Yes, thank you very much.

22 ROSITA WORL: And congratulations. Great job.

23 MARGO SCHWADRON: Thank you.

24 MERVIN WRIGHT, JR.: Thank you.

25 ROSITA WORL: Any further public comment?

1 Bambi Kraus.

2 DAVID TARLER: Bambi Kraus, and Bambi would
3 like these items distributed to you, which I will
4 do.

5 **BAMBI KRAUS**

6 BAMBI KRAUS: Good afternoon, everyone. Good
7 afternoon. Thank you very much to the committee
8 and the Department of Interior staff and our New
9 York hosts. It's a wonderful time to be out of
10 Washington, DC, and I'm happy to be up here in New
11 York.

12 I am Tlingit from Southeast Alaska, from Kake,
13 Alaska. I'm a shareholder of the Sealaska
14 Corporation. I'm a shareholder of the 13th Regional
15 Corporation. I'm also an enrolled tribal member in
16 one of over 200 Indian tribes in Alaska. So when
17 Dr. Worl was talking about the complexity of
18 Alaska, it really is a very interesting experience
19 in terms of consultation, and just, you know, in
20 terms of land and property, it's always an
21 interesting discussion.

22 I wanted to just share a couple of quick
23 things and then just a couple of quick questions.
24 So with that, I want to announce that I'm
25 representing the National Association of Tribal

1 Historic Preservation Officers. There are 117
2 THPOs in the United States today – actually 118.
3 They're all listed on our website, nathpo.org, and
4 on behalf of the board of directors I've been asked
5 to come today and talk a little bit more about the
6 GAO reports and seek an expansion, perhaps, of the
7 GAO's work.

8 I want to recognize one THPO in the audience,
9 and that's Bonnie Newsome here from Penobscot in
10 Maine. So it's always exciting to see a THPO in
11 action.

12 In terms of – I have on the screen, and here
13 in paper format, some quick pie charts that
14 demonstrate what NATHPO considers the barriers to
15 repatriation, and the barriers considered the
16 culturally unidentifiable, but also it may be that
17 the undetermined also have perhaps been – are being
18 considered a barrier to repatriation. I say this
19 because – and if you don't mind, Lesa, you can
20 scroll down the three pie charts quickly.

21 So the first one was the Federal agencies.
22 These are the museums, and this is from data from
23 the National Park Service's website on cultural
24 affiliation database and the culturally
25 unidentifiable database. So for the museums,

1 you'll see that only a portion of the remains have
2 actually been culturally affiliated, and that's the
3 darker slice of the pie, and the remaining 111,000
4 Native Americans are in the category called
5 culturally unidentifiable. And if you're in that
6 category, you – actually the burden is on the
7 tribes to do a lot of research, a lot of human
8 resources and getting out to look at collections
9 and request more information, any and all
10 information from the agency or repository, for this
11 particular example it would be museums, to try and
12 culturally affiliate. And that's a very exhausting
13 and time-consuming and expensive process, and we
14 consider this a barrier to repatriation.

15 The undetermined is the fact that, I think
16 Sherry has been totally accurate on this point,
17 that there have been cultural affiliations made and
18 yet they have not been repatriated, and so just for
19 the sake of designating that group of 2,483
20 individuals, they are called undetermined in this
21 particular pie chart. And again, I'm just giving
22 you a brief overview on what Indian country is
23 facing today.

24 The last pie chart is on the Smithsonian, and
25 at last week's hearing in the Senate there was, of

1 course, Kevin Gover representing the National
2 Museum of the American Indian. And you heard today
3 from a representative from the National – from
4 NMAI. Interestingly, the NMAI only has a tiny
5 portion of all the collections that the Smithsonian
6 has. And so here you'll see that there are about –
7 are an estimated number of 19,780 catalogue numbers
8 – not even a known human remain but catalogue
9 numbers – that may contain Native American objects.
10 And that would include human remains and objects.

11 And so because the Smithsonian has a different
12 practice than the inventory process that requires
13 early consultation before the inventory is
14 summarized, the Smithsonian reacts to a request
15 from a tribe and in this process they have to go
16 through thousands of records, I think it's – I'm
17 going to say 15,000, I can't remember off the top
18 of my head in the GAO report, but that's another
19 very time-consuming and expensive process that
20 tribes have to undergo in order to determine
21 whether the 141,000 – 14,160 catalogue numbers may
22 actually contain objects to be repatriated. And
23 this is – these are numbers from the GAO's
24 Smithsonian report. And you'll see that they – 340
25 are considered culturally unidentifiable. And I

1 believe that that's what Jackie Swift was talking
2 about earlier today.

3 And so NATHPO's interest is - if you don't
4 mind going back to the middle, the one above this -
5 is interested in how to seek more information about
6 the museum's NAGPRA work and how to get - somehow
7 get the process started that would require more
8 consultation or less of a burden put on the tribes.
9 And one of our recommendations is to request the
10 GAO look at the museums in terms of their NAGPRA
11 work and there are a couple of issues that would
12 have to be addressed but we are - I'm here to share
13 this with the Review Committee in case it's
14 something that you could perhaps put in your annual
15 report or recommendation. And the Federal money
16 that goes to these institutions - museums and
17 public institutions does not necessarily support
18 the entire organization, and thus the GAO doesn't
19 have such a strong hook as they would with Federal
20 agencies. But nonetheless, there are 33 million
21 dollars in NAGPRA grants have gone to tribes and
22 museums, and that's a sizable amount of Federal
23 dollars that might be perhaps evaluated. So I just
24 wanted to suggest that that's what the National
25 Association of THPOs is considering.

1 And I just want to say one last word on the
2 Federal agency pie chart, and that's at the very
3 beginning, and you'll see that the Federal agencies
4 have actually done the most work. And in the GAO
5 report and then during last week's hearing, they
6 say that they have – for the dark slice of the pie,
7 they have repatriated 55 percent of all the
8 culturally affiliated remains that they have – that
9 the agencies have identified. So I always found
10 that confusing with the GAO report, because they're
11 not actually talking about the entire universe;
12 they're talking about cultural affiliation. So of
13 the culturally affiliated remains, only 55 percent
14 have been repatriated. And if you look in Table 9
15 of their report, they report, for example, that the
16 United States Forest Service has only repatriated
17 15 percent of the culturally affiliated remains,
18 the Park Service has repatriated 84 percent, and
19 the Army Corps has repatriated 87 percent. So I
20 stand firm in those amounts, and it does indicate
21 that the agencies have done a significant amount of
22 work, which is very different from actually
23 complying with the Act, and that is the title of
24 the GAO report, that key agencies have not complied
25 with the Act.

1 So that was one issue I wanted the committee
2 to consider, and I also wanted to thank the
3 National NAGPRA Program for posting the information
4 on the committee meetings on your website, because
5 it really does make a difference. In terms of
6 coming up here, I almost left my office without
7 remembering to print out everything and bring it
8 with me to this committee meeting. And so I want
9 to support the committee's decisions to post their
10 deliberations and all of their background
11 information on the website. I hope that continues,
12 and I also hope that any information that's
13 distributed during the meeting is added to the
14 website.

15 I only have a couple of other issues to bring
16 up, and they're really – you could consider them
17 housekeeping issues. It seems as if the meeting
18 today and tomorrow is to take care of a lot of
19 housekeeping issues. And one of them is tribal
20 consultation, and you hear how important it is that
21 the Secretary of Interior and the President of the
22 United States himself would devote so much time and
23 attention and resources to coming up with different
24 or at least one unique tribal consultation process
25 to follow within Interior.

1 I will say that on behalf of our members I can
2 already hear some concern about digitizing and
3 publicizing to any and all the original inventories
4 and summaries going back to 1995, because I feel –
5 I've looked at a lot of those and I know that they
6 contain very sensitive information, including site
7 records, locations, specific items. And that work
8 was done with a tribe or tribes and a particular
9 Federal agency or museum, and I don't know if they
10 understood in 1995 that the information would be
11 published on the website. And when Makah and the
12 National Association of THPOs did our report back
13 in 2008-2009 on an overview of Federal agency
14 compliance with NAGPRA, we talked about how to get
15 information in people's hands so they can actually
16 do the work. And we did discuss digitizing these
17 original inventories from 1995, and the concern was
18 how do you share that information but not make it a
19 looting tool, not tell everybody exactly where
20 these items are. And again, there's very sensitive
21 information in them, and so I would urge the Park
22 Service or the committee to consider whether or not
23 that should be a tribal consultation issue prior to
24 posting on the website.

25 I have just two questions. I know they're

1 difficult questions. Also my job is to ask
2 difficult questions, and I don't take it personally
3 when people, you know, get exasperated with me.
4 And I know that it's your job to handle tough
5 questions, and it is a public forum; it is public
6 funds. And my question is about the dispute
7 process that you discussed earlier, and one of the
8 questions is during the last meeting in November,
9 there were two disputes that were heard. And I was
10 at the meeting and I read the minutes, and I didn't
11 recall seeing any kind of recommendation on which
12 entity will receive the items. The decision was
13 that the two museums did not have the right of
14 possession. And so I'm unclear in that particular
15 dispute process, as we move forward, if tribes -
16 are they going to know how a dispute will move
17 forward? Usually they get disputes heard and then
18 the recommendations published in the Federal
19 Register, and to date I have not seen that, and I'm
20 not quite sure what the status is of that - those
21 two disputes or if they've been dismissed or - and
22 so I'm seeking an answer on that question and one
23 other question.

24 ROSITA WORL: You were here earlier when we
25 discussed the dispute procedures, and I guess we do

1 have two approaches, but in essence all of our –
2 all of our dispute findings have been published by
3 the Federal Register – published in the Federal
4 Register. To date, it hasn't, and I think we're
5 six months – six, seven months late – later than
6 when this happened, so maybe do we know the status
7 of that?

8 CARLA MATTIX: We're still reviewing that and
9 it has not been published yet, and we're reviewing
10 those previous disputes in the Department.

11 BAMBI KRAUS: Thank you. My last question is
12 about process, and that's generally what I do in
13 Washington, DC. And it's an odd question and it
14 might seem minor, but I've had so many people ask
15 me that I came here to ask you. Actually I didn't
16 come here to ask you this but now that it seems
17 like this is the right time and forum. In terms of
18 reviewing your current charter, it states that the
19 National NAGPRA Program Manager is the Designated
20 Federal Official, and yet we have David Tarler,
21 whom we all love and cherish, but I'm just seeking
22 clarification on whether or not – the previous
23 charter apparently allowed that to be delegated.
24 The current charter does not allow for that
25 dedication or delegation, or at least it's silent

1 on it. It simply states that the Manager is the
2 DFO. So I thought I would ask the question and get
3 it answered so people can just move on and stop
4 asking me that question, too.

5 ROSITA WORL: We – you've heard the question.

6 SHERRY HUTT: Sure.

7 ROSITA WORL: Can we answer that?

8 SHERRY HUTT: Sure. The charter does place it
9 in the Manager of the program, or – and it can be
10 delegated. And the way we have proceeded is
11 actually the Associate Director, to whom I direct
12 report in terms of personnel and all, has made the
13 decision over time. And I agree with that
14 decision. We've discussed whether or not the
15 Manager should also be the DFO, and – because this
16 was not a haphazard or just a sort of default
17 decision, everything is certainly thought through.
18 And the idea was that if the Associate Director
19 made a decision, and actually appointed someone,
20 then in a meeting such as this, you have one person
21 actually running the meeting and then the Manager,
22 to whom you direct a lot of the substantive
23 questions. I can concentrate on that. It's very
24 difficult for one human to both run a meeting and
25 be sort of keeping up on all of your substantive

1 pieces and taking notes on those pieces, to respond
2 to your questions.

3 So the division of labor is not inconsistent
4 with that kind of piece in the charter, and the
5 Park Service has basically appointed in the last
6 two DFOs. And I guess as Manager I'm comfortable
7 with that, so that's the process that we have used.
8 We have never been advised that there's any legal
9 infirmity with doing that, but just from a division
10 of labor and functional kind of process, that's how
11 we've been operating. And there's an actual
12 appointment to the DFO.

13 BAMBI KRAUS: Well, I think, again for the
14 committee, it might be something for the committee
15 to consider in the future, to put the clause back
16 in that may be delegated, but that's for your
17 consideration.

18 ROSITA WORL: Yeah, thank you for bringing that
19 up. There are a couple of issues in the charter,
20 you know, that we've discussed in the past, and we
21 will certainly take a look at this one again.

22 You — do you have more?

23 BAMBI KRAUS: No, I'm done. Thank you very
24 much. If you have any questions, I can take a
25 minute here.

1 ROSITA WORL: Before I ask, are there any – do
2 you have any questions or comments?

3 MERVIN WRIGHT, JR.: Yeah.

4 ROSITA WORL: Go ahead, Mervin.

5 MERVIN WRIGHT, JR.: Just a comment. You know,
6 part of what – and I may be bringing something up
7 that I may have missed earlier in the meeting, but
8 part of what we talked about last week, I talked to
9 a couple of individuals, including Ms. Kraus, in
10 looking at this determination or the delegation or
11 designation of the DFO, and if people are out there
12 speculating about what the program is doing and how
13 it's conducting its operations, either the – either
14 the – you know, the procedures, the policy be
15 amended to reflect an accurate operational function
16 of the program so that everybody knows what's
17 happening, and I mean, you know, I don't
18 particularly see a problem with what's happening
19 here. Certainly appreciate your explanation,
20 Sherry. But I think, you know, for purposes of
21 looking at the – some of the GAO findings, for
22 example, you know, if there's things not distinct
23 in writing, you know, it is going to lead to that
24 type of speculation.

25 And the other thing I just wanted to mention

1 with regard to the decisions that we made in
2 November regarding the two disputes, it might be
3 helpful that the recording, the audio recording, be
4 included as part of that record, so that, you know,
5 we don't see summarized minutes, we don't see
6 possible paraphrasing or this is what I think we
7 heard, this is what we heard; no, this is what was
8 actually said for the record, on the record. So I
9 think that if it's done that way – and I don't know
10 if we're asking more work on Lesa or David, but it
11 used to be done that way where the recordings were
12 part of the record and that the minutes were done
13 in a fashion where if there were questions about
14 what was contained in the minutes that you went
15 back to the recording.

16 But I'm – you know, one of the concerns that
17 we raised also, not only in November but in
18 Florida, when we met in Florida, my first meeting,
19 was looking at how the Secretary responds to our
20 recommendations. And because we have not seen the
21 response from the Secretary with regard to our
22 recommendations, and so now we're looking at two
23 situations, two disputes where we've made a
24 decision but yet nothing has been published. And
25 it was said at the time when I raised the question

1 about why the Secretary isn't responding to our
2 recommendations, they said that – the response was
3 that the Secretary receives our recommendations
4 through the published notice and that they have
5 staff in the Secretary's Office who review those
6 notices and that's how the Secretary would respond
7 to our recommendations. So therefore, it's like
8 we're – you know, what are we doing here months
9 after we heard those disputes and those two – well,
10 all the parties, for that matter, haven't received
11 any notice about – at least official notice, that
12 we made a recommendation to the Secretary. That's
13 all.

14 SHERRY HUTT: Madam Chair, might we respond to
15 that?

16 ROSITA WORL: Go ahead.

17 SHERRY HUTT: I'll respond to part and then
18 Counsel Carla Mattix will respond to the other
19 points. As to the transcript of the proceedings,
20 they are recorded and those recordings are
21 archived. In fact, we have gone through to look at
22 taking the older – you know, as technology changes,
23 capabilities to look at things that were done on
24 prior formats get harder and harder. So part of
25 what we're working with Lesa is to move those

1 transcript – the oral recordings to more and more
2 stable formats, so that they're continuing to be
3 archived, and we do have archive responsibilities
4 and we do archive those oral recordings.

5 When the transcript is done, it is given to
6 the Review Committee. If there are any exceptions
7 to the transcript, the Review Committee would
8 advise us and then we could go back
9 contemporaneously to those oral recordings and see
10 if there are any exceptions. When the minutes are
11 done, the minutes go to the Review Committee to
12 sign off on. Before the Review Committee signs off
13 on the minutes, you have the transcript to compare
14 it to. I will say – I can't speak for before my
15 time in National NAGPRA, but since my time one
16 thing that the Review Committee has consistently
17 and unanimously agreed upon was the accuracy of the
18 transcript and the fair reflection of that meeting
19 in the minutes. And if there were any exception in
20 the last seven years, I've not known of it. So it
21 – of course, it falls to the Review Committee to
22 look at that and the seven minds put that together,
23 and of course staff and counsel also look at it.
24 And we've never found anything but consistently
25 high quality of reflection of the actual in the

1 minutes and the transcripts. But certainly we do
2 preserve those recordings.

3 Now if an entity wanted an old transcript that
4 we've taken down from the website - because they
5 get so large, we can't keep them up on the website
6 - we've made arrangements to do that as well, and
7 they have submitted those requests as well. We act
8 as sort of gatekeeper for those requests because
9 again it's a budget issue, and we pay Lesa by the
10 hour, and she's working phenomenal hours. And also
11 priority, we look at such things as preparing
12 Review Committee transcripts, such as this
13 transcript, before other sorts of things would get
14 in the way because timing is always a factor.

15 So that may speak to some of those items. As
16 to the other, I'll turn it over to Carla.

17 CARLA MATTIX: Hello? In response to Mervin's
18 additional questions about the publication of the
19 notice - sorry - this might be actually a good time
20 to remind everybody, and also inform the new
21 members, about the process after a dispute that
22 goes on within the Department. As you'll recall,
23 any of your Findings of Fact under Section 8(c)(3)
24 or dispute recommendations under Section 8(c)(4)
25 are advisory recommendations or findings of fact.

1 Those are your recommendations, and once you make
2 them at a meeting, they're out there; they are
3 final.

4 The Department has, as past practice, received
5 those recommendations and published them for the
6 public in a Federal Register notice as a
7 ministerial matter. We do – the Secretary of
8 Interior does not act on those recommendations. He
9 does not respond to them in any manner. They are
10 simply taken by the National NAGPRA Program and
11 essentially word-for-word put in a Federal Register
12 notice in the same manner that they were discussed
13 and decided upon at the committee meeting. So
14 Interior does not change those in any way, and we
15 do not respond to them. So that's how the process
16 works.

17 At the last Review Committee meeting, there
18 were a number of ethics issues raised. So the
19 current publication of a notice is being reviewed
20 at this time by both the Departmental Ethics Office
21 and our Division of General Law. So that is the
22 reason for the current delay, and there has not yet
23 been a decision whether we are going to publish a
24 notice this time, but that is being reviewed right
25 now.

1 SHERRY HUTT: There was one more point that
2 Committee Member Wright made that I'd like to
3 address, and that is confusion about the roles of
4 the people in the National NAGPRA Program and
5 what's going on in the National NAGPRA Program.
6 And to that I have the response that we typically
7 give when people have questions, and that is
8 www.nps.gov/NAGPRA and that website is updated on a
9 continual basis when there is something new. We
10 keep that "What's New" homepage current, and then
11 on the left-hand column are the upcoming meetings
12 and the dates and that sort of thing, and you can
13 drill down through the website based on the menu
14 that's on the right-hand column. But we put more
15 and more information up there. If anybody ever has
16 any questions, the first thing we always ask is,
17 "Have you checked the website?" because we strive
18 to keep that current. Thank you.

19 ROSITA WORL: Thank you.

20 Bambi, I have a couple questions. You are
21 suggesting that we have tribal consultation on the
22 digitizing of the 1995 inventories because of the
23 concern that there may be sensitive information on
24 that, and we actually had a discussion, you know,
25 about that, and we all -- I mean, I think there are

1 a number of tribes that have concerns, so I think
2 it's really a worthy topic that we need to pursue
3 further is the — I mean, I understand FOIA
4 requirements, but then there may be ways we could
5 still — you know, I mean if somebody wants to file
6 for a FOIA request, you know, they would have that
7 opportunity. But for us to blast everything out
8 there, you know, this kind of sensitive material I
9 think is something that we should really assess,
10 you know, because if we are putting information out
11 that might be detrimental to interests of tribes or
12 others, you know, then I don't think we want to be
13 responsible for that, but we certainly want to
14 comply with the law and we understand the FOIA
15 requests. So I would request, you know, that we go
16 ahead and put this as an issue that we try to
17 pursue through consultation with tribes.

18 SHERRY HUTT: And Madam Chair, I do appreciate
19 that. We will continue in the program to digitize
20 the data because that's good data management.
21 Whether or not it goes up on the web and whether
22 there should be consultation prior to that, that's
23 advice very well taken.

24 ROSITA WORL: Thank you. And the second one I
25 wasn't too clear on your recommendation. You said

1 that you were considering asking the GAO to review
2 museums, and you raise the issue that they don't
3 have the Federal funds that, of course, that
4 Federal agencies have, but they do receive NAGPRA
5 grants that go to tribes and to museums that total
6 \$33 million so far?

7 BAMBI KRAUS: Well, the NAGPRA grants are a
8 portion of the money that they may or – possibly
9 received in terms of their NAGPRA work. If they
10 receive public funds, then they are complying with
11 NAGPRA in some – or they will have to comply with
12 NAGPRA. I was using the \$33 million as an example
13 that there is a tie-in to Federal money in the GAO.

14 ROSITA WORL: So I'm not clear on your
15 recommendations.

16 BAMBI KRAUS: Oh, again, so the GAO has
17 examined Federal agencies and the Smithsonian, and
18 the third, and perhaps the largest, piece of the
19 repatriation realm for Indian people is the museum
20 work that's being done or not done. So the GAO
21 spent three years examining what Federal agencies
22 and the Smithsonian has done. And we thought that
23 it would be a good use of Federal dollars to have
24 them examine that work, because I think, you know,
25 you get stuff that you don't expect, but you also

1 have a stronger process at the end. So we're just
2 — NATHPO is on record for encouraging it and it's
3 part of our written testimony to the Senate
4 committee from last week, too.

5 ROSITA WORL: Yeah, I just wanted to understand
6 because we've just — you know, you're not
7 suggesting that that be withheld from them
8 because —

9 BAMBI KRAUS: No, no, no.

10 ROSITA WORL: Okay.

11 BAMBI KRAUS: Just there's a legal — a tie-in
12 to Federal money. The Government Accountability
13 Office has to have some kind of role with Federal
14 money.

15 ROSITA WORL: Okay. Thank you.

16 BAMBI KRAUS: Thank you very much.

17 ROSITA WORL: Okay. So — do you have written
18 testimony you're going to give?

19 BAMBI KRAUS: Oh, for this?

20 ROSITA WORL: Yes.

21 BAMBI KRAUS: No.

22 ROSITA WORL: Okay. Do we have any other
23 public comment?

24 DAVID TARLER: I believe we do have other
25 requests.

1 ROSITA WORL: Great. Wonderful.

2 **JACQUELINE COOK**

3 JACQUELINE COOK: Good afternoon, and thank you
4 for this opportunity. My name is Jacqueline Cook.
5 I'm the Repatriation Specialist for the
6 Confederated Tribes of the Colville Indian
7 Reservation. As customary in my country, I need to
8 give you my Indian name and that is (Native
9 American language). My people are Wenatchee, and
10 the Wenatchee are a constituent tribe of the
11 Colville Nation.

12 We would like to thank the Native American
13 Graves Protection and Repatriation Act Review
14 Committee for this opportunity to provide testimony
15 on our experiences working with NAGPRA. The
16 Columbia Plateau Intertribal Repatriation Group
17 consists of the tribes and bands from the Columbia
18 Plateau located in the Pacific Northwest states of
19 Washington, Idaho, and Oregon. Native American
20 ancestral remains hold a paramount religious
21 significance to the Confederated Tribes of the
22 Colville Reservation, the Confederated Tribes and
23 Bands of the Yakima Nation, the Confederated Tribes
24 of the Umatilla Indian Reservation, the
25 Confederated Tribes of the Warm Springs of Oregon,

1 the Nez Perce Tribes, and the Wanapum Band of
2 Priest Rapids, a nonfederally recognized group.
3 The tribes have chosen to work together in matters
4 of repatriation as descendant communities of the
5 people who have lived on the Columbia Plateau for
6 time immemorial.

7 We presented to you last on November 18, 2010,
8 at which time we provided testimony on our positive
9 experiences and barriers encountered related to the
10 repatriation of the Marmes collection under the
11 jurisdiction of the U.S. Army Corps of Engineers,
12 Walla Walla District. We also detailed some of the
13 issues of concerns and appreciate the
14 considerations and actions taken by the committee
15 as it related to our request for meeting
16 documentation. Today we would like to address some
17 of the inconsistencies and confusions we have
18 encountered in the Culturally Unidentifiable Native
19 American Inventories (CUI) Database.

20 Native American tribes and Hawaiian
21 organizations will be utilizing the Culturally
22 Unidentifiable Native American Inventories Database
23 more now with the implementation of 43 C.F.R. Part
24 10, Disposition of Culturally Unidentifiable Human
25 Remains, also known as the CUI Database. It is

1 important that the information found within be
2 accurate, up-to-date, and perhaps most importantly,
3 easy to understand. Inaccurate data makes the work
4 between tribes and museums and agencies more
5 difficult and can lead to unnecessary ill feelings.
6 Convolutd databases also lead to misunderstanding,
7 sharp learning curves, and long explanation to
8 policy level personnel, Elders, and/or to new
9 employees working with NAGPRA.

10 We have found it cumbersome and confusing to
11 wade through some of the following – and we
12 appreciate Dr. Hutt’s comments this morning that
13 the work is ongoing in this database, and we
14 understand that this is so, and hope that this will
15 help clarify some of your work and reinforce your
16 work.

17 Individuals listed on multiple databases: for
18 example, an individual can appear in the culturally
19 affiliated and the CUI Database.

20 New databases created unbeknownst to
21 institutions or affected tribes: as the example of
22 the Central Washington University plus the
23 University of Washington Burke Museum record, which
24 is in addition to the Central Washington
25 University, University of Washington and the Burke

1 Museum databases. It is important to note here,
2 the same individuals were reported in both the CWU
3 and the Burke/CWU CUI listings, but only updated on
4 the Burke/CWU list. The discrepancy has been
5 reported several times and has yet to be corrected.
6 It would be preferable to remove the new record and
7 correct the original record.

8 We've also found instances where one
9 institution reported individuals as CUI but
10 subsequent research determined control to be that
11 of a Federal agency. Possession of the individuals
12 was transferred to the agency, but they remain on
13 the first institution's CUI list. Updates have
14 been sent to reflect the change, but the CUI has
15 not been corrected.

16 Cases where individuals have been culturally
17 affiliated but the affiliation is not reflected in
18 the CUI list. Cases resolved through notice have
19 not been updated to reflect the change in status.
20 In some instances, multiple updates have been sent.
21 We have found in one instance that county
22 information is listed incorrectly, and the notes
23 regarding other repatriations for the incorrect
24 county have been provided, it is assumed, by
25 National NAGPRA. The institution submitting the

1 CUI listing did not provide it.

2 Forensic cases, which are listed in the CUI,
3 such as Arizona State Museum. Out of country
4 individuals also listed; for example, individuals
5 from Mexico. The field or column last updated is
6 confusing. Is this the last update by the
7 institution listing the CUI or the last update
8 updated by National NAGPRA? It would be helpful to
9 have a column indicating the last update by
10 institution with changes or without changes. There
11 are several cases where a yearly update was sent by
12 the institution, but the update – but the date in
13 the last updated column does not reflect the
14 update.

15 All of the data presented, not just the CUI,
16 should be a true database format. Presenting data
17 in searchable databases would allow for searches by
18 key words, such as tribe, state, county agency,
19 dates, archeologist, etcetera. Such a format would
20 also allow for additional fields, thus eliminating
21 the need for multiple databases, multiple tables.
22 In the format presented now, the information is not
23 a database but a Word table, and databases should
24 be linked to notices and other pertinent
25 information.

1 We would like to commend the National NAGPRA
2 Program staff for their hard work and diligence in
3 completing the CUI Database. We understand such
4 information is in continual change. We recommend
5 that the National NAGPRA Program make every effort
6 necessary to update the accuracy of the CUI
7 Database and that the NAGPRA Review Committee help
8 them in that effort as it relates to your ability
9 to make known the issues and suggest
10 recommendations to National NAGPRA, the Secretary
11 of the Interior, and Congress.

12 In conclusion, the Columbia Plateau Inter-
13 Tribe Repatriation Group once again thanks the
14 NAGPRA Review Committee for this opportunity to
15 speak about our experiences. We offer these
16 insights in hope of improving accuracy, clarity,
17 transparency, and the ease of use of the data
18 presented in the various databases. Addressing our
19 concerns, as well as others, will only aide in
20 completing our mission of returning ancestors.
21 Thank you once again.

22 ROSITA WORL: Thank you very much. We really
23 appreciate all of these recommendations that you've
24 made, and I'm sure that the NAGPRA program will be
25 reviewing them. And in some of the cases where

1 you've asked some specific questions I'm sure
2 they'll be getting back to you. But this kind of
3 information is absolutely invaluable, because if we
4 — you know, we need to have this kind of feedback
5 in order to, as you say, improve our efficiency.
6 So thank you very much.

7 I'm just wondering if anyone has any further
8 comment.

9 SHERRY HUTT: Madam Chair, I see you looking my
10 way, and I would like to second your comments.
11 When we receive input like this, we find it
12 valuable. We see it not as criticism but as
13 assistance, because what you're doing is you're
14 giving us user feedback. And in fact, we should do
15 more to reach out to receive that kind of feedback.
16 We — in some of the issues that are raised, in
17 terms of updating, it's a matter of having one
18 human, and that has been an issue. When the GAO
19 came in a year ago, we put aside everything to
20 support the GAO effort, and that meant that one
21 human could not then do the updates that would have
22 otherwise been done. And we're still catching up
23 on that, so there's that piece.

24 But your comments — I don't want anyone to
25 feel chilled in bringing forth such comments,

1 because they're not viewed by us as negative or
2 personal, but we appreciate the feedback. We live
3 for that feedback, because the more we receive, the
4 better we can serve.

5 The comments in terms of what's in the fields
6 and all is a very valid issue to receive feedback
7 on. But what we have found, and I must say this,
8 the more information we put up on the web,
9 particularly as it pertains to items in museum
10 collections for which there may be Federal agency
11 control, by putting them up on the website it gives
12 transparency to all of that and the discrepancies
13 become visible. And then we receive information
14 like this that says why the museum or not the
15 agency, and sometimes we can bring the agency and
16 the museum together and tell us what we should more
17 properly reflect. But there is a lag in getting
18 all of the data and the updates into the database,
19 and that's a data entry issue, and that's one of
20 the things that we spoke of this morning in terms
21 of having direct data entry, where it could be
22 checked by the webmaster and then put in. So these
23 are wonderful, and I would encourage this kind of
24 comment on an ongoing basis.

25 The other thing is that the National NAGPRA

1 Program does like getting out to constituents to
2 display the new databases and work through them in
3 the room, sort of in a live action kind of piece.
4 And that gives us the opportunity for feedback too.
5 For instance, at the upcoming NATHPO conference, we
6 would certainly like to be there where users,
7 active users, of those websites have the
8 opportunity to look at those websites, see the
9 presentations, and give us that kind of critical
10 feedback. And when I mean critical, I mean not in
11 a negative sense, but critical in terms of giving
12 good service and having that feedback.

13 So I want to say deeply and sincerely I thank
14 you for this, and I know the wonderful positive
15 spirit in which it is given. And we'll be at work
16 on it on Monday morning. Thank you, as always.

17 JACQUELINE COOK: It's our honor to be here and
18 hopefully provide some fresh eyes for this. Thank
19 you again.

20 ROSITA WORL: Thank you very much.

21 I'm wondering do we have any further public
22 comment?

23 STEPHEN SIMPSON: He is checking on one right
24 now.

25 ROSITA WORL: Okay.

1 DAVID TARLER: Is there anyone else who would
2 like to make public comment at this time?

3 If not, then Madam Chair, I would like to
4 recognize Carrie Garrow, who is the Executive
5 Director of Indigenous Law and Governments here at
6 Syracuse University College of Law to welcome us to
7 the law school.

8 ROSITA WORL: Great.

9 **COMMENT - CARRIE GARROW, SYRACUSE COLLEGE OF LAW**

10 CARRIE GARROW: Good afternoon. I just wanted
11 to welcome you. My name is Carrie Garrow. I am
12 Mohawk from Akwesasne, and I live here now in
13 Syracuse, and I run the Center on Indigenous Law,
14 Governance and Citizenship here in the College of
15 Law at Syracuse University. We do a lot of work
16 with tribal governments on strengthening codes,
17 constitutions. I do a lot of work with tribal
18 court judges. And we're happy to have you here and
19 welcome you here and hope you enjoy your stay here
20 at SU in the Onondaga Nation Territory. And if
21 there is anything we can do to make your stay more
22 pleasant, although we ordered some very nice
23 weather for you. This is a little unusual for
24 Syracuse, so please enjoy it. So welcome and it's
25 a pleasure to have you here.

1 ROSITA WORL: Thank you very much, and thank
2 you for your hospitality. We've been enjoying it
3 very much.

4 CARRIE GARROW: Good. And I'm sorry I can't be
5 here more often. It's a crazy time of year for me.

6 ROSITA WORL: It sounds like you have exciting
7 work.

8 CARRIE GARROW: Yes, thank you.

9 ROSITA WORL: Do we have any further public
10 comment? You're encouraged. This is your time to
11 address the committee about any concerns or issues
12 that you might have. We will have additional
13 public comment tomorrow.

14 So for tomorrow we have three action items.
15 We will review and act on the 2010 Report to
16 Congress. We will comment on the interim and final
17 and proposed rules implementing – no, we're not
18 going to do that?

19 DAVID TARLER: No, Madam Chair. When Sherry
20 reported to you this morning on the program report,
21 she –

22 ROSITA WORL: Okay. We have two action items
23 for tomorrow.

24 DAVID TARLER: Yes, correct.

25 ROSITA WORL: And then our second item will be

1 the consultation with the Review Committee on the
2 Department's discretionary review of the
3 regulations that are already codified in 43 C.F.R.
4 Part 10. Okay?

5 Do we have any further business to come before
6 the committee? Should we adjourn – recess? We
7 will recess until tomorrow. We – if we could
8 remind our folks about the invitation for tonight.
9 Some people may have not been here. So David,
10 would you remind folks again?

11 DAVID TARLER: Yes, all the Review Committee
12 members, staff, and all of the attendees are
13 invited to a supper and social at the Onondaga
14 Nation. There are driving directions on the table
15 at the top of the stairs, at the front of the – at
16 the back of the auditorium, and anyone who needs a
17 ride to the event if you would be in the lobby of
18 the Genesee Grand Hotel about 5:30 this afternoon.

19 ROSITA WORL: Okay. Thank you very much. So
20 we are in recess until tomorrow morning at 8:30.

21 DAVID TARLER: Thank you.

22 **MEETING RECESS**